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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481AM

5 - - - - -x

6 In the Matter of:

7

8 DELPHI CORPORATION, et al.

9

10 Debtors.

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13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 May 10, 2006

19 9:05 A.M.

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 Hearing re Motion to Authorize Motion for

3 Order Under 11 U.S.C. Section 1113(c)

4 Authorizing Rejection of Collective Bargaining  
5 Agreements and Under 11 U.S.C. Section 1114(g)  
6 Authorizing Modification of Retiree Welfare  
7 Benefits  
8  
9 Hearing re Statement/Expert Report of Thomas  
10 A. Kochan in Opposition to Debtors' Motion for  
11 Order Under 11 U.S.C. Section 1113(c)  
12 Authorizing Rejection of Collective Bargaining  
13 Agreements and Under 11 U.S.C. Section 1114(g)  
14 Authorizing Modification of Retiree Welfare  
15 Benefits  
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17 Hearing re Motion to Authorize Motion for  
18 Order Under 11 U.S.C. Section 1113(c)  
19 Authorizing Rejection of Collective Bargaining  
20 Agreements and Under 11 U.S.C. Section 1114(g)  
21 Authorizing Modification of Retiree Welfare  
22 Benefits  
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1 Hearing re Motion to Dismiss Party/Limit  
2 Participation in the Hearing on Delphi's  
3 Section 1113 and Section 1114 Motion  
4  
5 Reply to Motion Omnibus Reply of UAW in  
6 Support of Motion to Limit Participation in  
7 the Hearing on Delphi's Section 1113 and  
8 Section 1114 Motion

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10 Notice of Hearing/Proposed 1113/1114 Hearing

11 Agenda

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13 Hearing re Motion to Authorize Motion for

14 Order Under 11 U.S.C. Section 1113(c)

15 Authorizing Rejection of Collective Bargaining

16 Agreements and Under 11 U.S.C. Section 1114(g)

17 Authorizing Modification of Retiree Welfare

18 Benefits

19

20 Declaration of Kevin M. Butler in Support of

21 Delphi's Motion for Authority to Reject

22 Collective Bargaining Agreements Under 11

23 U.S.C. Section 1113(c) and Modify Retiree

24 Welfare Benefits Under 11 U.S.C. Section

25 1114(g)

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2 Declaration of Randal A. Middleton

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4 Objection to Motion

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6 Declaration of Donald L. Griffin

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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S  
2 THE COURT: Please be seated. Good  
3 morning. Okay. Delphi Corporation.  
4 MR. BUTLER: Your Honor, good  
5 morning. Jack Butler from the Skadden, Arps,  
6 Slate, Meagher & Flom, LLP firm again on  
7 behalf of the debtors for the second day of  
8 our section 1113, 1114 hearing. Your Honor,  
9 at the conclusion of yesterday's hearing, or  
10 actually during the course of the hearing,  
11 Your Honor, from the bench, provided a series  
12 of potential dates for continued hearing,  
13 asked the parties to meet and confer, which  
14 we've done. With the Court's permission we  
15 would like to schedule the fourth and fifth  
16 days of the hearing for May 24th and May 26th,  
17 a Wednesday and a Friday, several weeks from  
18 now. The interim period will give the  
19 opportunity for -- and it will facilitate good  
20 faith negotiations between the debtor and the  
21 unions between the conclusion of this week's  
22 hearings and the resumption of hearings on May  
23 24th. In order to be able to keep that  
24 schedule, we would move the May 24th omnibus  
25 hearing to May 30th, which was the other date

14

1 you had given us. And we'd ask to start the  
2 omnibus hearing at 11 o'clock. We also, Your  
3 Honor, with Your Honor's permission we're  
4 going to contact each of the parties that have  
5 scheduled things for that omnibus hearing and  
6 encourage them to roll their matters to June  
7 20th so that we can have a short rather than  
8 extended omnibus hearing. So we're going to  
9 try to encourage people to, unless they have  
10 something that's really pressing for the Court  
11 to deal with, to roll to the June 20th omnibus  
12 hearing. Those that will not do we'll take on  
13 May 30th. We'd like to start that -- the  
14 omnibus at 11:00 A.M. if that's possible.

15 THE COURT: Okay. Those dates and  
16 those times, they're all fine.

17 MR. BUTLER: Thank you. The other  
18 matter, Your Honor, is that the equity  
19 committee yesterday made some comments about  
20 the concept of bringing witnesses back for  
21 extended cross-examination at some point in  
22 the future. But also indicated that they  
23 wanted to meet and confer with us about that.  
24 We are willing to do that. We're having  
25 lunch, scheduled for Thursday, to have a

15

1 conversation with the equity committee. We

2 met with the committee last Wednesday,  
3 immediately after they got organized. I just  
4 wanted to indicate that, obviously, the  
5 debtors reserve their rights on that if we  
6 have to argue it with Your Honor. I don't  
7 want to -- I want the record to be clear as to  
8 that.

9 THE COURT: Right. Everyone's  
10 rights are reserved on that issue.

11 MR. BUTLER: And finally, Your  
12 Honor, if -- we'd like to re-call Mr. Butler  
13 for the continuation of his cross-examination  
14 in support of declarations that are Exhibits 7  
15 and 8. Mr. Kurtz from White and Case has a  
16 scheduling issue and has asked to go forward  
17 now with his cross-examination and the parties  
18 have all consented to that. And so Mr. Kurtz  
19 would go next and then Mr. Kennedy would  
20 resume the union cross-examination.

21 THE COURT: Okay. That's fine. All  
22 right. Mr. Butler, you're still under oath.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Okay. You can go on Mr.  
25 Kurtz.

16

1 MR. KURTZ: Thank you, Your Honor.

2 CROSS-EXAMINATION BY

3 MR. KURTZ:

4 Q. Good morning, Mr. Butler.

5 A. Good morning, counselor.

6 Q. The debtors have not evaluated the amount

7 of GM's potential claims arising from  
8 projection -- it's the CBAs, correct?  
9 A. That's true.  
10 Q. And the debtors have not compared the  
11 costs and the benefits of rejecting the CBAs  
12 now with the costs and benefits of simply  
13 permitting them to expiry at -- in or about  
14 October 2007, correct?  
15 A. It's our opinion that it would be damaging  
16 to the estate to wait until 2007.  
17 Q. Mr. Butler, my question is whether the  
18 debtors have compared the costs and benefits  
19 of rejecting the CBAs now with the costs and  
20 benefits of simply permitting them to expire  
21 in October 2007?  
22 A. I'm not aware of a specific analysis.  
23 Q. And you did attend the meetings of the  
24 board of directors at which the determination  
25 to file this motion was addressed and decided,

17

1 correct?  
2 A. I did.  
3 Q. And no analysis comparing rejection now  
4 with expiration in 2007 was presented to the  
5 debtor's board, correct?  
6 A. Not that I'm aware.  
7 Q. And the debtor's board has not otherwise  
8 considered that issue, correct?  
9 A. Not that I am aware.  
10 Q. And do you know the amount of GM's claim  
11 that debtors potentially will incur by

12 rejecting the CBAs now?

13 A. I do not know the specific amount.

14 Q. All right. Can I ask you to open up to

15 Exhibit 209, Joint Exhibit 209?

16 A. I have it.

17 Q. Okay. For some reason Exhibit 209 is a

18 compilation of a number of documents and where

19 I'd like to direct you is to the last

20 document, and, in fact, the last page of the

21 exhibit. All right. Is that the -- does that

22 bear the title maximum claims exposure

23 estimates?

24 A. Can you direct me to where on the page?

25 Yes, I see it. Maximum claims exposure.

18

1 Q. If you look at the second box from the

2 bottom, is there a number for the maximum

3 claim exposure for GM's potential --

4 THE COURT: I'm sorry. What's the

5 title of this exhibit? I'm not sure I have

6 the right one.

7 MR. KURTZ: It is the last three

8 pages of Exhibit 209. It's called preliminary

9 illustrative analysis of scenario c, and it

10 bears Bates number DPHAPA 9 through 11.

11 THE COURT: I'm sorry. My exhibit

12 book has a different exhibit there.

13 MR. KURTZ: For the very last three

14 pages?

15 THE COURT: No. It's just a totally

16 different exhibit. It's a form AK, is what I

17 have.

18 MR. KURTZ: What about the very last  
19 three pages?

20 THE COURT: No.

21 MR. KENNEDY: Your Honor, 209 in our  
22 confidential exhibits, which begins with form  
23 AK, but there's a compilation of documents  
24 past some blue sheets, the last one --

25 THE COURT: Oh, I see, I see. It's

19

1 a --

2 MR. KURTZ: I apologize, Your Honor.  
3 I don't know how the compilation of exhibits  
4 came to be one exhibit or having separate  
5 exhibits came to be compiled.

6 THE COURT: All right. Go ahead.

7 BY MR. KURTZ:

8 Q. Mr. Butler, is the maximum claims exposure  
9 estimate reflected in the second box from the  
10 bottom 8.598 billion dollars?

11 A. I believe that refers to the hourly OPEB  
12 liability at 75 percent retirement.

13 Q. Okay. And it's 8.6 billion dollars,  
14 correct?

15 A. I do see 8.598.

16 Q. And this was either created or compiled by  
17 Rothschild?

18 A. It appears so.

19 Q. And Rothschild is the debtor's financial  
20 advisor, correct?

21 A. Yes.



22 Q. All right. Now, are you aware of the cost  
23 of funding the OPEB benefits through  
24 expiration of the CBAs in or about October  
25 2007?

20

1 A. Off the top of my head I don't recall the  
2 number.

3 Q. Are you aware that the debtor's actuaries  
4 have calculated that number at only 300  
5 million dollars?

6 A. That would be generally consistent with my  
7 understanding of cash costs.

8 Q. Which would comprise only some three  
9 percent of the amount of the potential OPEB  
10 claim that will be incurred by Delphi by  
11 rejecting the CBAs now, correct?

12 A. If the math is correct.

13 Q. And the debtor's board did not consider  
14 that fact in deciding to file this motion to  
15 reject the CBAs, correct?

16 A. I don't recall.

17 Q. All right. Let me move to the portion of  
18 your supplemental declaration that's  
19 specifically directed to Appaloosa's  
20 objection, which I believe is paragraph 13.

21 That's Exhibit A, paragraph 13. Tell me when  
22 you're there.

23 A. Paragraph 13?

24 Q. Correct.

25 A. Yes.

1 Q. All right. This is a paragraph in which  
2 you will opine that Appaloosa's position that  
3 Delphi can wait until September 2007 for  
4 expiration of the labor agreements is  
5 untenable, correct?

6 A. Correct.

7 Q. And you identified two reasons, correct?

8 A. That's true.

9 Q. Your first reason is your suggestion that  
10 Delphi cannot lawfully implement changes to  
11 the terms of employment until it reaches an  
12 impasse, correct?

13 A. That's correct.

14 Q. But Delphi can easily reach that impasse  
15 by October 2007 when the CBAs expire, correct?

16 A. I don't -- I don't know that that's a true  
17 statement.

18 Q. If Delphi chooses to reach an impasse by  
19 October 2007 it can do so, correct?

20 A. We would need to bargain in good faith and  
21 I think that's a time dependant issue.

22 Q. And you can bargain in good faith from now  
23 until October 2007 and then reasonably  
24 conclude that in over a year's worth of  
25 negotiations, with no tangible result, you've

1 reached an impasse, correct?

2 A. That would be correct.

3 Q. So that would not cause any additional

4 delay, correct?

5 A. You could -- you could achieve that  
6 assumption.

7 Q. And, in fact, you could easily,  
8 potentially, reach an agree -- a consensual  
9 resolution with the unions sometime between  
10 now and October 2007 if there's no rejection,  
11 correct?

12 A. I'm sorry, could you repeat the question?

13 Q. You could easily, potentially reach a  
14 consensual resolution with the unions some  
15 time between now and October 2007, correct?

16 A. No, I would not characterize it that way.

17 Q. You don't think you have the potential to  
18 reach a resolution with the union any time  
19 between now and October 2007?

20 A. You said easily.

21 Q. Okay. I also said potentially. But how  
22 about you could reasonably reach a resolution  
23 with the unions sometime between now and  
24 October 2007, correct?

25 A. We are endeavoring to do so.

23

1 Q. And now, your second remark is that Delphi  
2 is vulnerable to a strike at a cost which  
3 would easily exceed any savings, correct?

4 A. That's correct.

5 Q. But Delphi is vulnerable to a strike now,  
6 based on this motion to reject, correct?

7 A. There is that possibility.

8 Q. In fact, unions are asking their members

9 to approve a strike, correct?

10 A. They are asking their members to approve

11 the ability to authorize strike.

12 Q. And have the debtors analyzed the

13 likelihood that the unions will strike based

14 on this motion to reject the CBAs?

15 A. We know that it is a possibility.

16 Q. You, in fact, in your professional

17 opinion, believe that if the Court permits

18 rejection the unions will strike, correct?

19 A. I believe that's a possibility.

20 Q. You believe it's likely, correct?

21 A. It depends on the outcome of our

22 bargaining.

23 Q. Do you remember giving a deposition in

24 connection with the human attrition program?

25 A. I do.

24

1 Q. I am going to read, I can go through the

2 exercise of handing you the transcript or you

3 can just trust that I read it accurately.

4 A. I would like a copy of the transcript.

5 Q. Mr. Baumstein, can you hand Mr. Butler a

6 copy of his sworn testimony? Why don't you

7 turn to page 107, lines 3 through 11.

8 Question: "If the unions don't agree and,

9 therefore, you pursue a non-consensual

10 resolution, have you considered whether the

11 individual employees would nonetheless agree

12 to work on the terms that you set forth in the

13 November proposal?" Answer: "It's my

14 professional view that we are likely to have a  
15 strike and it is likely an extended strike."  
16 That was a question you were asked at your  
17 deposition and answer that you gave, correct?  
18 A. That is correct.  
19 Q. Have the debtors analyzed the duration of  
20 any potential strike that results from this  
21 motion to reject the CBAs?  
22 A. It depends upon the outcome of our  
23 bargaining and this, of course, was prior to  
24 having the attrition plan approved.  
25 Q. Have the debtors reached a determination

25

1 as to the duration of a potential strike  
2 precipitated by this motion to reject the  
3 CBAs?  
4 A. We do not have a definitive duration.  
5 Q. Do you have some range of duration that  
6 the debtors believe is reasonable, if in fact  
7 the CBAs are rejected in connection with this  
8 motion?  
9 A. No, we do not have for pure rejection of  
10 this motion.  
11 Q. And have the debtors determined the cost  
12 of such a strike?  
13 A. Cost would be very high.  
14 Q. Would the cost be destructive to the  
15 company?  
16 A. Cost would be very harmful to the company.  
17 Q. Potentially irreparable?  
18 A. Depending on duration, could be.

19 Q. If it was an extended strike, as you  
20 opined in your deposition, that could be  
21 irreparable damage to the company, correct?  
22 A. Depending on timing and duration it could  
23 be.  
24 Q. All right. Let me go back to your  
25 supplemental declaration. Although you

26

1 included testimony about its potential, the  
2 debtors, in fact, have not analyzed the  
3 likelihood of a strike based on expiration of  
4 the CBAs in October 2007, correct?  
5 A. I'm sorry, could you repeat the question  
6 again?  
7 Q. Yeah. Although you included testimony  
8 about its potential, the debtors have not  
9 analyzed the likelihood of the strike based on  
10 expiration of the CBAs in October 2007,  
11 correct?  
12 A. We've done no specific analysis to that  
13 point.  
14 Q. And although you included testimony about  
15 the potential impact of such a strike, the  
16 debtors have likewise not analyzed the cost of  
17 the strike based on expiration, correct?  
18 A. The cost of a strike in any circumstances  
19 where -- depending on timing and duration --  
20 Q. My question is whether the debtors have  
21 analyzed it in connection with expiration --  
22 A. We have not done the specific --  
23 Q. -- of the CBAs in 2007, yes or no?

- 24 A. We have not done a specific analysis.
- 25 Q. And you certainly cannot conclude that it

27

- 1 is more likely that the unions will strike
- 2 based on the expiration of the CBAs as
- 3 compared with rejection of the CBAs in this
- 4 motion, correct?
- 5 A. I -- that requires an assumption. No, I
- 6 don't -- I don't know how to analyze that.
- 7 Q. And you likewise cannot conclude that the
- 8 cost of any potential strike based on the
- 9 expiration of the CBAs will exceed the cost of
- 10 any strike based on the expiration, correct?
- 11 A. That depends on timing and duration.
- 12 Q. And so, that's cer -- the potential and
- 13 cost of the strike in 2007 certainly isn't the
- 14 reason that the debtors are moving now to
- 15 reject the CBAs, correct?
- 16 A. The -- to resolve our issues --
- 17 Q. Yes or no?
- 18 A. We are trying to resolve our issues as
- 19 expeditiously as possible.
- 20 Q. My question is whether -- that's not my
- 21 question. My question is whether the cost and
- 22 likelihood of a strike in 2007 is the reason
- 23 you're moving to reject today?
- 24 A. No, that is not the reason.
- 25 Q. And although you submitted testimony

28

1 identifying the risk and impact of a strike in  
2 October 2007, based on the expiration of CBAs,  
3 you've included no such testimony with respect  
4 to the present risk of a strike and the cost  
5 of a strike based on the rejection of the CBAs  
6 now, correct?

7 A. I'm sorry, could you repeat the question?

8 Q. Although you included, in your  
9 supplemental declaration, testimony about the  
10 potential for a strike and the cost of the  
11 strike based on expiration of the CBAs, you've  
12 included no such testimony about the risks and  
13 costs based on rejection of the CBAs in  
14 connection with this motion, correct?

15 A. That's correct.

16 Q. And that's true even though you think  
17 there will be a strike and even though the  
18 unions are looking for a vote authorizing the  
19 strike, correct?

20 MR. BUTLER: Objection. That wasn't  
21 what he testified to, Your Honor.

22 THE COURT: Why don't you just  
23 phrase it as a separate question?

24 MR. KURTZ: All right.

25 BY MR. KURTZ:

29

1 Q. And that's true even though you've  
2 testified that it is likely that the unions  
3 will strike if there's a non-consensual  
4 resolution, correct?



5 MR. BUTLER: Objection. That's not  
6 what he testified to.

7 THE COURT: I think he's already  
8 given you the answer to this anyway.

9 BY MR. KURTZ:

10 Q. And by the way, did you draft your  
11 supplemental declaration?

12 A. It was drafted for me and I edited it.

13 Q. Okay. Was it drafted by Skadden Arps?

14 A. It was.

15 Q. Okay. And did you edit that paragraph  
16 that we're talking about, paragraph 13?

17 A. I don't recall.

18 Q. All right. And just to put all this  
19 concern about some purported strike based on  
20 the expiration of the CBAs in context, the  
21 debtors intend to eliminate OPEB benefits in  
22 any new deal they reach with the unions,  
23 correct?

24 A. I'm sorry, could you repeat the question  
25 again?

30

1 Q. Sure. The debtors intend to eliminate  
2 OPEB benefits in any deal they reach with the  
3 unions, correct?

4 A. That is our current intent.

5 Q. All right. In fact that's --

6 A. For those employees that are covered by  
7 the benefit guarantee.

8 Q. Okay. No further questions.

9 THE COURT: Okay.

10 MR. KURTZ: Thanks to the unions for  
11 permitting me to go first.

12 MR. KENNEDY: Tom Kennedy, Your  
13 Honor, for IUE-CWA.

14 CROSS-EXAMINATION BY

15 MR. KENNEDY:

16 Q. Good morning, Kevin.

17 A. Good morning, Tom.

18 Q. Do you understand that Delphi has a  
19 tradition stemming from its GM days and since  
20 the spin-off of engaging in pattern  
21 negotiations with its unions?

22 A. I do.

23 Q. And is Delphi expecting pattern bargaining  
24 to occur in connection with the Section 1113  
25 negotiations?

31

1 A. It is a reality that we deal with and we  
2 are attempting to work with the unions to the  
3 best of our ability, simultaneously.

4 Q. So then you're not expecting the pattern  
5 negotiations to be the rule in these  
6 negotiations, is that correct?

7 A. I'm expecting that it is, by practice and  
8 practicality, it is a factor that will impact  
9 these. But we are trying to bargain as  
10 simultaneously as we can.

11 Q. Isn't it a fact that with respect to the  
12 attrition program Delphi's approach was to  
13 first reach an agreement with the United Auto  
14 Workers?

15 A. It is true that because the attrition  
16 program was a tripartite agreement and General  
17 Motors interest was highest in resolving this  
18 with the UAW first, we did, in fact, bargain  
19 with the UAW first.

20 Q. Is it your testimony that you were  
21 simultaneously engaging in negotiations for an  
22 attrition program with the IUE-CWA through  
23 March 2006?

24 A. We were trying to keep the IUE aware of  
25 the material developments. But I would not

32

1 call it active bargaining on the attrition  
2 program. Particularly in light of the fact  
3 that again, it required General Motors  
4 involvement.

5 Q. Given the magnitude of the cuts in this  
6 proposal that you've made to the IUE-CWA, do  
7 you expect it to accept whatever pattern you  
8 achieve with another union?

9 A. I would expect that we would have to  
10 tailor the agreement, to some extent, for each  
11 of the unions.

12 Q. And when you say tailor to some extent, do  
13 you mean to keep within a basic economic  
14 parameter and then to adjust it for particular  
15 unions?

16 A. To generally preserve the critical  
17 provisions that allow us to be competitive and  
18 then also adjust to deal with the realities of  
19 each of the union's conditions.

20 Q. Did you get a letter from Henry Reichard  
21 who, as you know, is the head of the IUE-CWA  
22 Automotive Conference Board, on March 31st  
23 telling you that IUE-CWA was a separate labor  
24 organization, that it had to be dealt with  
25 directly by Delphi?

33

1 A. I do recall that letter.  
2 Q. And did you write back to Mr. Reichard in  
3 response to that letter?  
4 A. I'd like to check exhibits on that. That  
5 was a March 31st letter?  
6 Q. Yes.  
7 A. I don't recall.  
8 Q. Prior to 2006, is it your contention that  
9 the IUE-CWA has engaged in pattern bargaining  
10 with Delphi in 1999 and 2003?  
11 A. I think that's a fair statement.  
12 Q. Isn't it true that the IUE has negotiated  
13 separate wages for each of its facilities?  
14 A. There is a variance of wages at each of  
15 the facilities.  
16 Q. So that insofar as there is any tradition  
17 of pattern bargaining it doesn't extend to  
18 wages, isn't that correct?  
19 A. Each of the unions have provisions in  
20 their agreements that allow local flexibility  
21 in wages and other matters. And the IUE has  
22 taken great advantage of that or has done that  
23 to a great extent.  
24 Q. I'm asking you, given the fact that there

25 are provisions for local variation isn't it

34

1 true that to the extent there has been pattern  
2 bargaining it has not been true with respect  
3 to wages at IUE-CWA facilities?

4 A. There is variation within the wage -- wage  
5 portion of the agreements as it relates to a  
6 pattern.

7 Q. And given that variation, wouldn't you  
8 agree with me that there has not been a  
9 pattern at IUE-CWA facilities of taking  
10 whatever wages have been negotiated with the  
11 UAW and simply applying them to our facility?

12 A. No, I would not say that.

13 Q. You think there has been a pattern of  
14 applying the wages?

15 A. I think for traditional employees, which  
16 constitute the majority of the IUE membership,  
17 there has, in fact, been a pattern.

18 Q. But isn't it also true that at each of the  
19 IUE facilities wages differing from the  
20 national pattern have been negotiated?

21 A. They have generally been negotiated for  
22 new hires, true.

23 Q. Isn't it also true that the IUE negotiated  
24 a medical value plan at some of its  
25 facilities?

35

1 A. That's true.

2 Q. And that medical value plan is not the  
3 same plan as is represented by your contract  
4 with the UAW, isn't that true?

5 A. For those employees who are not covered  
6 under the traditional pattern.

7 Q. Isn't it also true that the IUE has  
8 negotiated separate pension arrangements at  
9 some of its facilities?

10 A. That's true.

11 Q. And the IUE has negotiated work rules and  
12 flexibility agreements at its facilities,  
13 isn't that also correct?

14 A. That is correct.

15 Q. Now, how would you characterize the  
16 relationship between the IUE-CWA and Delphi as  
17 two bargaining partners?

18 A. I think it has been constructive and  
19 positive through the years.

20 Q. The term flow-backs has been used in this  
21 proceedings. Can you describe to the Court  
22 what a flow-back is?

23 A. A flow-back is a tri-lateral agreement  
24 between General Motors, Delphi and the UAW  
25 that allows for employees that were prior GM

36

1 employees to flow to openings at UAW  
2 facilities.

3 Q. And is it accurate to state that between  
4 September of 1999 and September of 2003  
5 approximately 4,500 Delphi employees flowed

6 back to GM?

7 A. I believe that's a correct number.

8 Q. Isn't it true that none of those employees

9 were IUE members?

10 A. The IUE is not party to that tripartite

11 agreement.

12 Q. The total flow-backs from Delphi to GM

13 from September '99 until the end of 2005 were,

14 approximately, 7,000 employees?

15 A. That, I think, is approximately correct.

16 Q. And again, none of them were IUE members,

17 correct?

18 A. No.

19 Q. Isn't it a fact that under the existing

20 agreements some Delphi operations have been

21 consolidated or wound down without union

22 objection, since the spin-off in 1999?

23 A. There have been a handful.

24 Q. I'm sorry, could you repeat that?

25 A. It's true for a handful.

37

1 Q. And at the time of the spin-off in 1999,

2 Delphi already had agreements in place with

3 IUE-CWA that provided for starting wages and

4 benefits below the traditional pattern for

5 certain employees, correct?

6 A. For new hires, true.

7 Q. And was it one of Delphi's goals in 2003

8 -- in the 2003 negotiations with the IUE-CWA,

9 to extend the IUE-CWA competitive hire

10 agreements and eliminate any grow-in ability

11 of those employees to achieve a traditional  
12 wage?

13 A. That's true.

14 Q. And isn't it true that Delphi was able, in  
15 fact, to secure an agreement with IUE-CWA in  
16 which the grow-in provisions for new hires was  
17 eliminated?

18 A. There was -- there was an agreement made  
19 there, true.

20 Q. Which IUE plants eliminated a grow-in to  
21 the traditional wage for new hires?

22 A. I don't recall specifically, off the top  
23 of my head, those that did.

24 Q. All right. As I understand it, Delphi has  
25 approximately 3,000 employees of its 33,000

38

1 that work under non-traditional wage  
2 agreements, is that correct?

3 A. I believe that's approximately correct.

4 Q. And two thirds of those, about 2,000, are  
5 IUE members, correct?

6 A. I believe that's correct. About 1,900.

7 Q. Now that figure 1,900, does that include  
8 employees of Kettering facility, for instance,  
9 that took a four-year wage freeze from 1998 to  
10 2002?

11 A. I don't believe it does, but I'm not  
12 certain.

13 Q. I'm sorry you were going to continue --

14 A. I don't believe it does, but I'm not  
15 certain.



16 Q. Were there about 500 such employees at  
17 Kettering, correct?  
18 A. I believe that's approximately correct.  
19 Q. So that if we were looking at the number  
20 of IUE employees that earn wages below any  
21 traditional rate, we would have to take the  
22 1,910 new hires and add to them the 500 people  
23 at Kettering?  
24 A. On that assumption, that's correct.  
25 Q. Would there be additional people that

39

1 would have to be added from the IUE workforce  
2 of 8,500 to represent the full number that is  
3 working on non-traditional agreement?  
4 A. Not that I'm aware.  
5 Q. In your declaration you state that the  
6 all-in cost for a traditional Delphi employee  
7 is, approximately, \$78.63 per hour?  
8 A. That's true.  
9 Q. That's effective as of the end of 2005?  
10 A. I believe that's correct.  
11 Q. Is that \$78.63 per hour, is that  
12 reflective of the average all-in labor cost at  
13 IUE facilities?  
14 A. I believe the all-in labor cost at IUE  
15 facilities would be somewhat lower.  
16 Q. Do you know what the all-in cost is at  
17 Gadsden in Alabama IUE facility?  
18 A. I believe it is -- I believe its on the  
19 order of 21 dollars.  
20 Q. Well, as a matter of fact, didn't you

21 state at paragraph 82 of your declaration that  
22 certain supplemental agreements between Delphi  
23 and IUE-CWA have starting wages between \$7.77  
24 and eight dollars which produces an all-in  
25 labor rate under 20 dollars an hour?

40

1 A. I believe there may be those rims, I  
2 believe I stated that.  
3 Q. Okay.  
4 A. Yeah.  
5 Q. So the sense -- that the facility to which  
6 that would apply is Gadsden and among others,  
7 wouldn't it be accurate to state that the  
8 Gadsden all-in labor rate is below 20 dollars  
9 an hour?  
10 A. It -- it -- that could be true, I'm not  
11 certain, as I sit here, the mix of employees  
12 and where they are in the grow-in schedule.  
13 Q. Well, if I told you that the average wage  
14 rate at Gadsden was \$9.85, if you assume that,  
15 what would the all-in labor rate be on your  
16 usual calculation of adding 65 percent?  
17 A. About -- about 17, 18 dollars.  
18 Q. In your declaration you stated at times  
19 during 2005 there were nearly 4,000 employees  
20 on temporary lay-off or in the jobs bank?  
21 A. That's true, that was our peak -- peak  
22 number, I believe.  
23 Q. How many IUE members at the highest point  
24 in 2005 were on the jobs bank?  
25 A. I believe it's on the order of 600 or 700.

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1 Q. And weren't over 100 of them put on the  
2 jobs bank after the company filed for  
3 bankruptcy, October 1 of 2006 -- of 2005,  
4 rather?

5 A. I don't recall.

6 Q. The hourly attrition program that Delphi  
7 has negotiated with the United Auto Workers,  
8 that's intended to provide a soft landing for  
9 people affected by this proceeding, is that  
10 correct?

11 A. That's true.

12 Q. And do you agree with me that the soft  
13 landings are important because they allow  
14 employees to avoid much of the economic  
15 hardship that they would otherwise face?

16 A. I do.

17 Q. In fact, that's the comment you made in  
18 paragraph 45, correct, of your declaration.  
19 Do you remember that?

20 A. I believe that's a comment I have made.

21 Q. And what economic hardship were you  
22 referring to that they would otherwise face?

23 A. Either the dislocation, if a plant is  
24 wound down or closed, or the impact of an  
25 involuntary or reduction in wage and benefits,

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1 if it were negotiated and ratified.

2 Q. And your reference to a soft landing had

3 three elements, is that correct?

4 A. I believe so.

5 Q. Well, let me lead you through it. The

6 first was early voluntary retirements,

7 correct?

8 MR. BUTLER: If you're going to be

9 talking about his declaration, can you point

10 him to it?

11 MR. KENNEDY: Yeah. Of course.

12 MR. BUTLER: What paragraph?

13 MR. KENNEDY: Paragraph 42. It's

14 Exhibit 90.

15 THE WITNESS: And I'm sorry, what

16 paragraph?

17 MR. KENNEDY: Paragraph 42.

18 THE WITNESS: I have it.

19 BY MR. KENNEDY:

20 Q. Now the first two components of the soft

21 landings are early retirement -- early

22 voluntary retirements and pre-retirement

23 placements, correct?

24 A. That's correct.

25 Q. Now, with respect to our brothers and

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1 sisters in the United Auto Workers, do you

2 know what percentage of their 23,000 active

3 employees are able to participate in either

4 the early voluntary or the pre-retirement

5 placements?

6 A. I believe that's between 55 and 60

7 percent.

8 Q. In the third leg of the soft landings are  
9 the flow-backs that GM has opened up for 5,000  
10 additional UAW members, correct?

11 A. That's correct.

12 Q. And isn't it also accurate that GM and  
13 Delphi have committed to a mutually acceptable  
14 resolution to any remaining Delphi employees  
15 who wish to leave Delphi if they're -- once  
16 the 5,000 flow-back and the 60 percent  
17 retirements is completed?

18 A. I believe the agreement calls for  
19 developing a mutually acceptable solution of  
20 that with implementation and it's subject to  
21 the three parties.

22 Q. So something will be done. We don't know  
23 what yet, but something will be done with  
24 respect to anybody left over from the UAW unit  
25 that wants to leave, correct?

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1 A. I believe that's correct.

2 Q. All right. Let's look how those apply to  
3 the IUE unit. Are you aware that  
4 approximately 36 percent of the IUE unit would  
5 be eligible for early voluntary retirements or  
6 pre-retirement placements?

7 A. I believe that's generally correct. I'm  
8 not sure if it's exactly 36 but between 36 and  
9 40 percent.

10 Q. Okay. And it's also accurate to state  
11 that IUE employees do not have a flow-back  
12 option, correct?

13 A. They have preferential hiring, but not  
14 flow-back.  
15 Q. Preferential hiring by whom?  
16 A. By General Motors.  
17 Q. All right. So if this is the General  
18 Motors that has announced plans to drastically  
19 reduce its North American workforce and is  
20 agreeing to accept 5,000 flow-backs from the  
21 UAW Delphi employees and perhaps more, and  
22 your proposal to us is that we have a  
23 preferential right to be hired once all of  
24 those people are already taken care of?  
25 A. GM is in the process of hiring temporaries

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1 right now and it will -- time will tell  
2 whether all -- after our attrition program or  
3 our proposal is worked through, how many  
4 people will flow-back.  
5 Q. So the basic position here with respect to  
6 IUE employees desiring to leave Delphi is a  
7 time will tell, is that the company's  
8 position?  
9 A. It's not immediately known what the  
10 possibilities will be.  
11 Q. And again, with respect to our brothers in  
12 the UAW, and I applaud them for having gotten  
13 these benefits, but they're entitled to a  
14 25,000 dollar relocation bonus in a situation  
15 in which there's a flow-back, correct?  
16 A. That's correct.  
17 Q. Is there any relocation bonus that would

18 be available to IUE employees who would be  
19 entitled to get on a list, a preferential  
20 hiring list?

21 A. At the present there is not.

22 Q. Now, if we look at the Warren facility  
23 where approximately 3,800 IUE members are  
24 employed, that is a facility that Delphi is  
25 planning on keeping open, correct?

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1 A. That's correct.

2 Q. That's a core facility and you want it to  
3 continue?

4 A. That's correct.

5 Q. To the extent there are layoffs at the  
6 Warren facility, will they be by seniority?

7 A. Yes, that's our -- that has been the  
8 agreement and our practice.

9 Q. So that the remaining employees at Warren  
10 will be the senior employees, namely those  
11 employees now getting at or close to a  
12 traditional wage, correct?

13 A. That is correct.

14 Q. And many of those employees will not be  
15 able to retire and they will not be able to  
16 flow-back, isn't that also correct?

17 A. That is correct.

18 Q. And those employees, your proposal would  
19 take them from 26 dollars down to \$12.50  
20 effective July 3rd, 2006, is that correct?

21 A. I'm sorry, could you repeat the question?

22 Q. Sure. For those employees at Warren, your

23 proposal is to take them, assuming there's no  
24 GM support, and we'll talk about that, but  
25 assuming there isn't, from 26 dollars an hour

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1 down to 12.50 an hour on July 3rd, 2006 --  
2 A. That's correct.  
3 Q. Is that correct?  
4 A. That is correct.  
5 Q. Now, would you agree that, like most  
6 Americans, the folks that have been earning 26  
7 dollars at Warren, probably between their  
8 credit card debt, their mortgages and tuition  
9 for their kids are probably spending most of  
10 what they make now?  
11 A. It's -- my belief is people tend to live  
12 to their income levels.  
13 Q. And have, generally, debt which reflects  
14 that income level, correct?  
15 A. I think that varies on the individual.  
16 Q. Well, wouldn't you guess that that's --  
17 you must know what the credit union records  
18 are at Warren, do you? How many people are in  
19 debt?  
20 A. No, I don't.  
21 Q. Okay. You talked about the economic  
22 impact that you were concerned about. What is  
23 your understanding of what the economic impact  
24 will be for the thousands of employees at  
25 Warren that your proposal would suggest would



1 go down from 26 dollars an hour down to 12.50

2 on July 3rd of this year?

3 A. It would be a significant impact.

4 Q. A significant impact?

5 A. Yes.

6 Q. Do you have any idea how many of them

7 would be forced to file for bankruptcy as a

8 result of that proceeding?

9 A. No, I don't

10 Q. Have you looked at that?

11 A. No, I have not.

12 Q. Now, did IUE engage in negotiations with

13 Delphi over the proposed attrition plan?

14 A. Negotiations have gone on regarding the

15 attrition program.

16 Q. And in those negotiations, isn't it

17 correct that the IUE representatives, Henry

18 Reichard and Steve Lichens and others, said to

19 you that IUE doesn't have flow-backs?

20 A. That's true.

21 Q. And didn't they make the point that most

22 of our members can't early retire?

23 A. That is true.

24 Q. And didn't they ask for an attrition plan

25 which reflected the values -- the value,

1 rather, of those missing benefits, the missing

2 flow-backs and the missing early retirement

3 opportunities?

4 A. We did receive a bullet sheet proposal  
5 regarding that.

6 Q. And isn't it accurate to state that your  
7 response to the IUE-CWA was that you would  
8 agree to an attrition plan of 140,000 for  
9 people with 10 years or more and 70,000 with  
10 people -- for less than 10 years, but no  
11 additional value, notwithstanding the  
12 difference between the IUE and the other  
13 unions?

14 A. It's my understanding we're actively in  
15 talks regarding that topic right now and we  
16 had indicated to the IUE we were aware that  
17 they were bargaining on this very same topic  
18 with General Motors. And that we were looking  
19 at the outcome of that in light of this  
20 discussion as well.

21 Q. Isn't it a fact that the Delphi  
22 negotiators told the IUE-CWA that they would  
23 rearrange the package but they wouldn't  
24 provide any more value in the package than  
25 what they had already negotiated with the UAW?

50

1 A. At some point in the bargaining that may  
2 be said, we are not concluded yet.

3 Q. I'd like to address your proposals that  
4 have been made to the IUE-CWA. And I'm  
5 referring specifically to paragraph 47 of your  
6 declaration, so that you know where we're  
7 pointing to. You indicate in your declaration  
8 "the unions have flatly rejected" the October

9 and November proposals that were made, is that

10 correct?

11 A. That's true.

12 Q. At what meeting did IUE-CWA flatly reject

13 the October and November proposals?

14 A. I believe shortly after our presentation

15 of those proposals we were told they were

16 unacceptable.

17 Q. Did they refuse to discuss the October and

18 November proposals?

19 A. No.

20 Q. Well, look at paragraph 47. At paragraph

21 47 don't you state that the union "refusing

22 even to discuss the October proposals or the

23 November proposals"?

24 A. In terms of engaged discussions, it's my

25 view that did not really occur.

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1 Q. That's correct. In fact, there were no

2 meetings at all between the IUE-CWA from

3 October 20 until November 15th, isn't that

4 correct?

5 A. I'm not aware.

6 Q. You're not aware if there were any

7 meetings?

8 A. I am not aware of any specific dates. I'm

9 not always directly involved in IUE

10 bargaining.

11 Q. All right. But you haven't had a report

12 that there was a negotiating session between

13 October 20th and November 15th, have you?

14 A. Our practice has been to bargain both  
15 face-to-face and also through conversations on  
16 the phone. And it's my understanding that the  
17 bargaining team was in discussions, but as far  
18 as engaged substantive negotiations --  
19 regarding these proposals, it is my view they  
20 were not occurring.

21 Q. All right. We couldn't join with more in  
22 that observation, but you're the one who  
23 indicated in your declaration that IUE-CWA  
24 refused to even discuss the proposals. Isn't  
25 it a fact that neither you nor the unions

52

1 scheduled a meeting between October 20th and  
2 November 15th to discuss these proposals?

3 A. I am not aware.

4 Q. Okay. Now, after the November 15  
5 proposal, what you called the competitive  
6 benchmark proposal, isn't it a fact that the  
7 IUE-CWA wrote either you or Mr. Quick and  
8 indicated that we were looking to prepare a  
9 counterproposal to those November 15th  
10 proposals and that we needed information in  
11 order to do that?

12 A. I believe that's true.

13 Q. And isn't it also a fact that from  
14 November 23rd, 2005 through December 18th  
15 there were no negotiation sessions between the  
16 IUE-CWA and Delphi?

17 A. I don't recall.

18 Q. You don't know of any such sessions?

19 A. None that come to mind. I don't recall  
20 the specifics of the dates.  
21 Q. And then at that point, on December 19th,  
22 Delphi withdrew the November 15th proposal,  
23 correct?  
24 A. After consultation with the unions, yes.  
25 Q. Well, was there a meeting with the IUE-CWA

53

1 that I don't know about that occurred before  
2 the December 19th withdrawal that discussed  
3 this proposal?  
4 A. I believe there were telephone  
5 conversations with the leadership of the IUE  
6 about the prospect of this withdrawal to  
7 facilitate discussions.  
8 Q. Isn't it a fact that on the morning of  
9 December 19th, about 10 minutes before a press  
10 release was issued by Delphi advising that  
11 there was going to be a withdrawal of the  
12 proposal, Mr. Reichard received a courtesy  
13 telephone call advising him of that?  
14 A. I don't believe that's correct.  
15 Q. Did you speak to Mr. Reichard and advise  
16 him that the company was going to withdraw its  
17 November 15th proposal?  
18 A. I believe that the staff, in the days  
19 prior to that -- immediately prior to that,  
20 indicated that this topic was under  
21 consideration and sought input from Mr.  
22 Reichard as to whether this would be a  
23 positive event.

24 Q. Did you?

25 A. I don't recall.

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1 Q. Now, in paragraph 55 of your original  
2 declaration you state that Delphi  
3 conditionally withdrew the competitive  
4 benchmark proposal "in an effort to facilitate  
5 discussions with GM and the UAW regarding a  
6 consensual resolution to Delphi's request for  
7 contract modifications," correct?

8 A. That's correct.

9 Q. You didn't mention, in paragraph 55, that  
10 you were doing this to facilitate discussions  
11 with the IUE-CWA, did you?

12 A. I did not mention that there.

13 Q. That's because that wasn't one of the  
14 purposes, was it? The IUE-CWA hadn't been  
15 consulted before this withdrawal, had it?

16 A. No, I don't believe that's true. I  
17 believe we consulted with the IUE.

18 Q. Did you leave the IUE-CWA out of paragraph  
19 55 by accident?

20 A. The -- there was -- as our largest union,  
21 of course, high focus on the UAW, but we did  
22 consult with the IUE, as I recall.

23 Q. And that consultation was a phone call?

24 A. Yes.

25 Q. Was it only a phone call that you had with

55

1 the UAW as well, or were there face-to-face  
2 meetings in the period of time between  
3 November 15th and December 19th?

4 A. I recall there were both face-to-face and  
5 a phone call regarding this topic.

6 Q. Okay. But now let's look at why you  
7 withdrew the December -- rather the November  
8 15th proposal. In paragraph 55 you indicate  
9 that it's to facilitate discussions. Do you  
10 have your supplemental declaration with you,  
11 sir?

12 A. I do.

13 Q. Could you take a look at paragraph 6?  
14 Isn't it a fact that in paragraph 6 the reason  
15 for the withdrawal has changed to "Delphi  
16 withdrew its competitive benchmark proposals  
17 in response to the union's opposition to these  
18 proposals and because of their refusal to  
19 negotiate with Delphi"?

20 A. That is a -- that's a correct statement.

21 Q. All right. So the -- paragraph 55 of your  
22 original declaration is wrong and paragraph 5  
23 of your supplemental is right? Or are you  
24 saying they say the same thing?

25 A. The UAW very publicly indicated that a

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1 good place to start, if we were serious about  
2 negotiating, was withdrawal of this -- the  
3 November 15th proposal. And we took that into  
4 consideration and consulted with the other  
5 major unions, IUE and the Steelworkers, as I

6 recall.

7 Q. Well, had the IUE publicly stated that  
8 they were insisting that the November 15th  
9 proposal be withdrawn before they would  
10 negotiate?

11 A. I don't recall them making that public  
12 statement.

13 Q. Okay. In fact, IUE-CWA wrote you a letter  
14 saying they were going to make a counteroffer,  
15 correct?

16 A. That is correct.

17 Q. Now, once the November 15th proposal was  
18 withdrawn isn't it accurate to state that IUE-  
19 CWA would not have had a proposal to counter?

20 A. I believe the IUE-CWA had the basis,  
21 whether it be called a counter or a proposal,  
22 the basis to advance a counter or a proposal  
23 of whatever they felt was appropriate.

24 Q. Now, how long have you been doing labor  
25 negotiations?

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1 A. Twenty-five years.

2 Q. Okay. In those 25 years have you ever  
3 made a counterproposal to a proposal that had  
4 already been withdrawn?

5 A. In some cases we have advanced our ideas  
6 in the face of the other party withdrawing  
7 something we felt was untenable.

8 Q. So your notion here is that the IUE-CWA  
9 would advance some ideas in response to your  
10 withdrawal of the proposal?



11 A. Some -- some constructive engagement to  
12 try to solve the problem. Be it a bullet  
13 sheet, a what-if proposal, as is common in our  
14 relationship.

15 Q. The proposals that you've made on October  
16 20th, November 15th and, ultimately, March  
17 24th of '06 are the same for all your unions,  
18 correct?

19 A. They are largely the same.

20 Q. And those proposals don't vary depending  
21 on whether the particular facilities they  
22 would apply to are profitable or not?

23 A. As applies to, I believe all the  
24 facilities, none are profitable.

25 Q. Well, is the -- you know the Brookhaven

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1 facility in which the IUE members work?

2 A. I am generally aware of it.

3 Q. Are you aware that in '05 it had a  
4 positive operating income?

5 A. I am not aware.

6 Q. You are not aware of that?

7 A. I am not.

8 Q. Would that have made a difference to  
9 Delphi in drafting the proposals that were  
10 going to be submitted to the IUE and therefore  
11 applicable to the Brookhaven plant?

12 A. Several of the main provisions that we  
13 feel are important for restructuring dealt  
14 with the no-sell/no-close provision as well as  
15 jobs provisions. And so, the large part of

16 the -- what was consistent among the proposals  
17 went beyond wage and benefits.  
18 Q. But you didn't make any effort to sculpt  
19 these proposals so that you identified to each  
20 union which parts of the contracts each union  
21 had needed to be modified, did you?  
22 A. We hoped to engage that through  
23 bargaining.  
24 Q. But at least the proposal, as it stands  
25 now, is a one-size-fits-all essentially

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1 uniform proposal to all unions regardless of  
2 the economic circumstances under which their  
3 members work, isn't that true?  
4 A. The framework of the proposal is to  
5 attempt to create industry competitive  
6 provisions for all U.S. sites.  
7 Q. Well, industry competitive provisions for  
8 all U.S. sites?  
9 A. Yes.  
10 Q. Okay. So this --  
11 A. Affected by the national agreements.  
12 Q. Affected by the national agreements. So,  
13 the industry competitive wages that you've  
14 proposed would be the same whether the  
15 individuals were working in Alabama or working  
16 in Northern Michigan, is that correct?  
17 A. We basically proposed that for standard  
18 starting wage, unless otherwise lower, in the  
19 case of the IUE where it has facilitated  
20 retention of business. They would be at a

21 given level, 10 growing to 12.50 on  
22 production, as I recall. Ten dollars growing  
23 to 12.50 on production, as I recall.  
24 Q. When you made the October 20th proposal to  
25 the IUE did you include with it the

60

1 information necessary for the IUE to evaluate  
2 the proposal?  
3 A. I believe we started flowing information  
4 available to that -- available to do that  
5 assessment shortly thereafter.  
6 Q. The IUE made requests for information from  
7 Delphi as early as October 7, correct?  
8 A. I don't -- I can't stipulate the specific  
9 date, but they made --  
10 Q. But you, at least, know that in October  
11 the IUE started making requests for  
12 information?  
13 A. I believe that's true.  
14 Q. And isn't it also true that as late as  
15 April 2006 Delphi was still responding to the  
16 information requests made in October?  
17 A. I believe that's true. There were a great  
18 number of requests with a great deal of  
19 complexity and analysis required.  
20 Q. At what point in this process did the IUE-  
21 CWA ask the company to tell it the amount of  
22 savings that Delphi was seeking to generate at  
23 each IUE plant?  
24 A. I don't recall.  
25 Q. But didn't that begin in October?

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1 A. It may have.

2 Q. And wasn't it repeated again in November?

3 A. That could be.

4 Q. Do you know if Chanon made that same  
5 request in January?

6 A. I am uncertain.

7 Q. Do you know if Mr. Reichard made that  
8 request again on March 31st in response to  
9 your March 24th proposals?

10 A. I believe that's the case. Our, again,  
11 our proposals have been created to get to a  
12 competitive level rather than a specific level  
13 of savings.

14 MR. KENNEDY: Can I have just a  
15 moment, Your Honor?

16 THE COURT: Yes.

17 MR. BUTLER: Your Honor, can we have  
18 a five minute recess?

19 THE COURT: Is that okay with you?

20 MR. KENNEDY: Yes, sir.

21 THE COURT: Okay. I'll be back at  
22 10:05.

23 (Recess at 10:00 A.M. until 10:07 A.M.)

24 THE COURT: Please be seated.

25 Okay. Back on the record in Delphi. Mr.

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1 Butler, you're still under oath.

2 THE WITNESS: Yes, Your Honor.

3 CONTINUED CROSS-EXAMINATION BY

4 MR. KENNEDY:

5 Q. Mr. Butler, I'd like to direct your  
6 attention to Exhibit 189 in the exhibit book.

7 A. I need to get another exhibit book,  
8 counselor.

9 Q. Someone is about to give that to you.

10 A. 189?

11 Q. It looks like volume eight. Kevin,  
12 you're going to look at, it's different. I'm  
13 looking at an e-mail which is 189.

14 A. I'm looking at a wage chart.

15 Q. Yeah, it's Exhibit A -- it's actually  
16 Exhibit B in 189.

17 A. Yes, I have it.

18 Q. Do you recognize that as an e-mail?

19 A. It is an e-mail.

20 Q. In fact, if you look at the bottom of the  
21 first page, the upper stuff being a forward  
22 that would not be relevant, this is an e-mail  
23 from Chuck McGwee to Henry Reichard, isn't  
24 that correct?

25 A. Yes, it is.

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1 Q. Chuck McGwee is the Delphi official that  
2 was named as being responsible for the  
3 provision of information to the IUE, in  
4 response to its request?

5 A. Chuck coordinated the gathering and  
6 disbursement of information to the union.

7 Q. And Mr. Reichard, of course, was the  
8 chief IUE-CWA official engaged in discussion  
9 with Delphi?  
10 A. I believe that's true.  
11 Q. But the e-mail indicates that the  
12 attached documents respond to questions raised  
13 by President Clark in his letter dated October  
14 7, 2005, see that?  
15 A. I do.  
16 Q. President Clark is President Jim Clark of  
17 the IUE-CWA?  
18 A. That's true.  
19 Q. And what is the date on this e-mail  
20 responding to these questions dated October 7,  
21 2005? You see that it's March 16th?  
22 A. I see a whole string of ---  
23 Q. If you look up six lines from the bottom  
24 of the page?  
25 A. I see Thursday, March 16, 2006.

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1 Q. And that's the date on which Mr. McGwee  
2 responded to the information request of  
3 October 7th?  
4 A. It appears so.  
5 Q. And the e-mail has three attached  
6 questions and answers, is that correct?  
7 A. Yes.  
8 Q. And did you approve these answers or  
9 responses to the questions before they were  
10 sent out?  
11 A. I was consulted on these answers, yes.

12 Q. So the answer that the company gave to  
13 the question, "What is the company's overall  
14 savings/cost goal" is set forth in the first  
15 of these attachments to this e-mail?  
16 A. Yes.  
17 Q. And you've indicated, "Delphi's proposals  
18 are not constructed to achieve a specific cost  
19 reduction goal."  
20 A. That's true.  
21 Q. So that it was impossible for the IUE-CWA  
22 to provide a response to your proposals that  
23 would meet a specific cost reduction goal,  
24 isn't that true?  
25 A. Our proposals, because --

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1 Q. Just answer if that's yes or no.  
2 A. Would you repeat the question?  
3 Q. Isn't it a fact that it was impossible  
4 for the IUE-CWA to make a counterproposal to  
5 the company that would achieve the same cost  
6 savings goal that the company might have  
7 intended for its proposals?  
8 A. I don't believe that's true.  
9 Q. From the point of view of the IUE-CWA, in  
10 March of '06, the company's position is you  
11 don't have the cost saving reduction goal.  
12 Correct?  
13 A. That's true.  
14 Q. And the IUE also asked, did it not, on  
15 October 7th, "specifically how is the overall  
16 labor contribution apportioned among the

17 various labor groups?" And in response to  
18 that the answer was "Delphi has not sought to  
19 allocate any cost reduction goal among its  
20 different unions." Isn't that also true?  
21 A. That's true.  
22 Q. In a situation in which the company has  
23 not identified a cost reduction goal to a  
24 union, either overall or for that particular  
25 union, how could a union construct a

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1 counterproposal that would be able to achieve  
2 the same results the company was seeking?  
3 A. The company's proposals were built on  
4 achieving competitive agreements and those  
5 were laid out as it related to, at least,  
6 wages and benefits on any sheets, as is our  
7 practice, which I recall were provided. And  
8 trying to calculate a total savings goal as a  
9 myriad of assumptions that could be modeled,  
10 and I believe models were made available that  
11 were interactive and so could be projected.  
12 So our main objective here is to create  
13 comparative agreements that allow us the  
14 competitive cost structure necessary to bid  
15 and win work in our core products.  
16 Q. Did you, as a bargainer -- I'm not asking  
17 you for a legal conclusion, as a bargainer  
18 responsible, I take it, for directing the  
19 company's negotiations with its various  
20 unions, undertake any specific analysis of how  
21 collective bargaining might be different under



22 Section 1113 than had been your experience in  
23 the prior 25 years?  
24 A. A specific analysis?  
25 Q. Yes.

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1 A. I don't recall a specific analysis, other  
2 than knowing through advice of counsel there  
3 were certain requirements or tests that might  
4 with Chapter 11.  
5 Q. At any point before May 2 of 2006, did  
6 Delphi identify to the IUE-CWA the cost  
7 savings it believed its proposals would  
8 achieve at the various IUE facilities?  
9 A. I don't recall.  
10 Q. Do you know of any such disclosure to the  
11 IUE of what the impact of the company's  
12 proposals would be, at its facilities?  
13 A. I believe through the financial models  
14 that could be derived.  
15 Q. So your notion was that the IUE would  
16 generate itself what the union thought the  
17 company's cost reduction proposals were?  
18 A. I believe that the financial advisors  
19 working through the models, along -- and I  
20 understand the IUE had a financial advisor,  
21 would take and model those impacts.  
22 Q. You didn't feel under 1113 that Delphi  
23 had any obligation to specify to IUE-CWA or  
24 any of its other unions what cost reduction  
25 savings it was hoping to achieve through its

1 proposals?

2 MR. BUTLER: Objection. Calls for  
3 legal conclusion.

4 THE COURT: I'm sorry. You're  
5 asking this on what basis? Just general  
6 basis?

7 MR. KENNEDY: I think rhetorical  
8 flourish would be the general basis.

9 THE COURT: Okay.

10 MR. KENNEDY: Under that  
11 circumstance, I'll withdraw.

12 THE COURT: Okay. Now, that's the  
13 candor I like in negotiations.

14 MR. KENNEDY: Candor, we are.

15 BY MR. KENNEDY:

16 Q. Mr. Butler, in paragraph 52 of your main  
17 declaration, you state that in connection with  
18 the November 2005 competitive benchmark  
19 proposals, but Delphi served all of its unions  
20 with new proposals that superseded the October  
21 proposals, close up. You see that?

22 A. I do.

23 Q. That's unusual language in collective  
24 bargaining that proposals were served on a  
25 union. Isn't it true that there was no face-

1 to-face meeting between IUE-CWA and Delphi at  
2 which the November 15th proposals were  
3 presented?

4 A. I believe the proposals were transmitted  
5 to the IUE and then a follow-up meeting  
6 arranged.

7 Q. Well, they were transmitted by overnight  
8 mail to the various delegates to the IUE-CWA  
9 conference court, correct?

10 A. I believe that's true, as it relates to  
11 the locals, yes.

12 Q. After that November 15th proposal was  
13 withdrawn, between December 2005 and March  
14 2006, isn't it true that there were no formal  
15 negotiation sessions between IUE and CWA and  
16 Delphi concerning changes the company was  
17 proposing in the collective bargaining  
18 agreement?

19 A. I'm sorry, can you repeat the question?

20 Q. Sure. Isn't it true that between  
21 December '05 and March '06 there were no  
22 formal negotiation sessions between IUE-CWA  
23 and Delphi?

24 A. I don't recall whether there were any  
25 full conference board discussions. I think,

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1 as is our practice in bargaining, there were  
2 several discussions between the international  
3 and the corporate staff.

4 Q. I'd like you to take a look at Exhibit  
5 90. Mr. Butler, do you recognize Exhibit 90  
6 as the March 24th cover letter to a proposal  
7 provided to IUE-CWA?

8 A. I do.

9 Q. Now, in your cover letter of March 24th,  
10 in the first paragraph, you indicate that this  
11 is the proposal that Delphi intends to include  
12 in its section 1113 and 1114 motion, to be  
13 filed with the bankruptcy court on March 31st,  
14 is that correct?

15 A. That's true.

16 Q. At the time the March 24th proposal was  
17 made the company had already made a firm  
18 decision to move forward with the 1113 motion  
19 on March 31st, is that correct?

20 A. I don't believe that's an appropriate  
21 characterization, no.

22 Q. Okay. Were you leaving open the idea  
23 that between March 24th and March 31st a  
24 comprehensive agreement could be reached  
25 between IUE-CWA and General Motors

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1 Corporation?

2 A. Depending on the nature of  
3 counterproposals or development in discussions  
4 with General Motors it may have created a  
5 situation where we would consider the timing  
6 of the filing, a 1113 and 1114.

7 Q. Okay. Wasn't it your expectation, at the  
8 time you wrote the March 24, 2006 letter, that  
9 Delphi was going forward with the filing of  
10 this motion on March 31st?

11 A. I considered that a possibility but not  
12 an absolute.

13 Q. It was only a possibility?

14 A. A possibility.

15 Q. How many times did Delphi meet with IUE-

16 CWA between March 24th and March 31st?

17 A. I don't recall.

18 Q. Was it once on March 29th?

19 A. It may have been. I was not involved in

20 those meetings.

21 Q. Okay. As of March 24th, is it your

22 understanding that IUE-CWA had enough

23 information that would allow it to accept the

24 March 24th proposal?

25 A. I believe that the IUE had a considerable

72

1 amount of information at that time.

2 Q. Well, that's probably true, but that

3 wasn't the question. Did they have all of

4 their questions answered so that they could

5 make a judgment on whether to accept the March

6 24th proposal before March 31st?

7 A. It's my view that the IUE had sufficient

8 information to produce a counterproposal, if

9 not accept it.

10 Q. Okay. Let's look at the consequences of

11 acceptance. I take it by acceptance you're

12 referring to the remainder of the pages that

13 constitute Exhibit 90, correct?

14 A. That's true.

15 Q. And Exhibit 90 identifies two alternative

16 proposals, doesn't it?

17 A. It's one proposal with one alternative in

18 it.

19 Q. Okay, so it's one proposal with an  
20 alternative in it.

21 A. Yes.

22 Q. And that proposal was to be effective as  
23 to what day?

24 A. July 3rd for most provisions, as I  
25 recall.

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1 Q. And other provisions April 1st, correct?  
2 If you at paragraph -- rather page 4,  
3 effective date.

4 A. Yes.

5 Q. So this proposal, except in instances  
6 where there's a separate date set forth, was  
7 intended to be effective April 1st?

8 A. Yes.

9 Q. Five days after you made it, or six or  
10 seven, whatever it is?

11 A. That's true.

12 Q. Okay. And did the proposal have,  
13 incorporated within it, a no strike clause?

14 A. It did.

15 Q. And it did because the existing national  
16 agreements have a no strike clause and this  
17 terms sheet was containing the changes? Is  
18 that correct?

19 A. It had a no strike clause because we  
20 believe that to be a competitively productive  
21 provision in the agreement.

22 Q. Well, do the pages that we identified as  
23 Exhibit 90 contain a reference to a no strike

24 clause?

25 A. I would have to review.

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1 Q. Would you, please? I'd like to be clear  
2 on this. It appears on page 19.

3 A. Yes.

4 Q. Okay. And the proposal also has a zipper  
5 clause, correct?

6 A. What is, as I understand, referred to as  
7 a zipper clause.

8 Q. The no waiver clause?

9 A. Yes.

10 Q. And that appears on page 24? And under  
11 the zipper clause on page 24 of Exhibit 90,  
12 the union waives its right to bargain over any  
13 matter, even matters covered under the  
14 agreement? Am I correct?

15 A. That's correct.

16 Q. Okay. Now at page 3, in the box  
17 identified as transformation proposals,  
18 there's a list of elements of these proposals  
19 that are, in fact, contingent upon General  
20 Motors' funding, correct?

21 A. That's correct.

22 Q. And they include the wage rates?

23 A. The higher wage rates, true.

24 Q. The wage rates above 12.50?

25 A. Yes.

75

1 Q. And they include the dental plan?

2 A. They do.

3 Q. And payments comparable to unemployment  
4 compensation supplement are also contingent  
5 upon General Motors?

6 A. Yes, the higher sub-payments.

7 Q. And the buyout and buy-down payments are  
8 all contingent upon General Motors?

9 A. That's true.

10 Q. Retiree medical accounts?

11 A. As I recall, that's true.

12 Q. And the defined contribution plan that  
13 the company was proposing in March 24th is  
14 contingent on General Motors' support,  
15 correct?

16 A. As I recall.

17 Q. So, let us assume that you and Bernie  
18 Quick and John Sheehan are very persuasive  
19 fellows and you meet with the IUE-CWA on March  
20 28th and the IUE-CWA agrees, even waives  
21 ratification it's such obviously a good deal.  
22 In that event, what would the wages have been,  
23 effective July 3rd, 2006, under this proposal?

24 A. Absent GM subsidy, they would have a  
25 12.50 for production workers that are at

76

1 traditional rates. And below that if they  
2 were below.

3 Q. Okay. Now, if the Union had agreed and  
4 accepted the March 24th proposal and it was in



5 effect and it had a zipper clause and a no  
6 strike clause, why would General Motors  
7 provide funding to raise the wages above  
8 12.50?

9 A. It was our expectation that this was a  
10 proposal and a framework for discussion and  
11 negotiation. So, I think, we fully  
12 contemplated that the IUE would have differing  
13 views on all the provisions in here and we  
14 would negotiate.

15 Q. So that if this proposal wasn't actually  
16 meant to be accepted by the IUE-CWA, isn't  
17 that fair to say?

18 A. No. It was -- this is a competitive  
19 proposal and of course we would have been  
20 delighted if it were accepted. But in the  
21 course of bargaining we know there's give and  
22 take.

23 Q. What would the pension provisions have  
24 been if this proposal had been accepted for  
25 employees who weren't under the General Motors

77

1 pension guarantee?

2 A. The pensional provision -- I would have  
3 to review.

4 Q. Well, it's on page 19. Please feel free  
5 to review it.

6 A. Thank you.

7 Q. It's called personal savings plan, but I  
8 believe you would agree with me it's intended  
9 to replicate a pension?

10 A. Yes. Absent GM's support I believe we  
11 would have implemented a defined contribution  
12 benefit.  
13 Q. Well, would you agree with me, Mr.  
14 Butler, that retirement income benefits is one  
15 of the critical areas of the contract?  
16 A. I believe they are.  
17 Q. And once the HRP, the early retirement  
18 plan is frozen, how many IUE employees would  
19 not be eligible for the GM guarantee?  
20 A. I don't specifically recall off the top  
21 of my head.  
22 Q. 2,000, in that order of negative?  
23 A. It's a fair number.  
24 Q. Okay. And under the proposal at page 19,  
25 under personal savings plan under the GM

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1 assisted proposal, "The corporation will  
2 provide a base contribution and a match of  
3 employee savings." Correct?  
4 A. Yes.  
5 Q. Now, this March 24th proposal doesn't  
6 even identify what the pension contributions  
7 will be by Delphi even if Delphi got GM's  
8 support, correct?  
9 A. That's true.  
10 Q. And if the IUE accepted the March 24th  
11 proposal, what incentive would General Motors  
12 have for providing money into Delphi to use to  
13 provide contributions to a personal savings  
14 plan for the thousands of IUE members who were

15 not under the guarantee?

16 A. It was our hope and expectation that  
17 through the course of bargaining that would be  
18 defined.

19 Q. So you had no expectation, again let me  
20 ask you, that the IUE would or could accept  
21 what you've identified is the March 24th  
22 proposal, isn't that true?

23 A. I believe that this provided a framework  
24 for bargaining.

25 Q. Well, let's look at the -- page 20, the

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1 next page, just continuing thought for a  
2 moment. Where it says, "in the absence of  
3 such," meaning GM's support, "the corporation  
4 will implement a defined contribution benefit  
5 for future benefit accruals where  
6 appropriate." That's what it says, correct?

7 A. That's correct.

8 Q. So that in the event there was no GM  
9 support, the pension offer in the March 24th  
10 proposal was to have the corporation implement  
11 a plan in the future at an undisclosed amount  
12 where the corporation thought it was  
13 appropriate, isn't that correct?

14 A. Subject to bargaining.

15 Q. Okay. Would you also agree with me, Mr.  
16 Butler, that post-retirement healthcare is a  
17 critical subject for bargaining and has been  
18 between IUE-CWA and Delphi?

19 A. I would agree.

20 Q. And, am I also accurate that the  
21 healthcare proposal for retirees -- let me  
22 withdraw that. Am I accurate that on page 21,  
23 the healthcare proposal for actives that would  
24 cover them when they retire is a retiree  
25 medical account?

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1 A. Yes, I believe that's true.  
2 Q. Now, does this proposal, the retiree  
3 medical account proposal, it's also contingent  
4 upon General Motors' support, correct?  
5 A. That's correct.  
6 Q. But isn't it true that the proposal  
7 doesn't even identify how much of a  
8 contribution the corporation will make to  
9 covered employees into this retiree medical  
10 account?  
11 A. True, subject to bargaining.  
12 Q. And if there were no GM support, what  
13 would the contribution be?  
14 A. It would be topic of bargaining.  
15 Q. Okay. Now all of this bargaining, if we  
16 had accepted the proposal would take place in  
17 a context in which there was an active no  
18 strike clause, correct?  
19 A. If the proposal were accepted on its  
20 face.  
21 Q. So that the bargaining would essentially  
22 consist of the union saying it would really be  
23 nice if you guys set up a retiree medical  
24 account and Delphi would have right to say

25 well, we'd rather not. And that would be the

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1 end of the bargaining, isn't that correct?

2 A. If the union accepted this proposal  
3 without counterproposal, that could occur.

4 Q. Let's look at the buyout provisions that  
5 appear on page 13. The bottom of page 13.  
6 The buyout provisions are also contingent upon  
7 General Motors' support, correct?

8 A. That's true.

9 Q. And, the language of the offer of March  
10 24th provides "in the absence of such support  
11 the corporation will discuss implementation of  
12 affordable severance pay provisions."

13 Correct?

14 A. That's correct.

15 Q. Now, in a context in which the union,  
16 IUE-CWA, has accepted your March 24th  
17 proposal, what would the union's recourse be  
18 in the event those discussions were not  
19 satisfactory to the union?

20 A. In the event that this were accepted  
21 without counterproposal negotiation?

22 Q. Yes.

23 A. The recourse would be continued  
24 discussions.

25 Q. And, if, at some point, the company said

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1 there's a zipper clause in the contract,

2 fellows, we're tired of discussions. What  
3 would the union's opportunity to protest that  
4 be?

5 A. Contractually, it would be limited.

6 Q. Limited to nothing, correct?

7 A. Without counterproposal in advance.

8 Q. Now, we've used the phrases sub-benefits  
9 a couple of times, there may be people in the  
10 room who don't know what that is, why don't  
11 you describe it?

12 A. Sub-benefits are supplemental  
13 unemployment benefits which wrap around or  
14 supplement worker unemployment benefits. And  
15 as a general proposition for traditional  
16 employees, provide approximately 95 percent of  
17 take-home pay. You know, when combined with  
18 unemployment benefit.

19 Q. Now, would you agree with me that that's  
20 also an important topic of collective  
21 bargaining from the point of view of job  
22 security for union members?

23 A. It's been an important point -- or topic  
24 of discussion as it relates to income  
25 security.

83

1 Q. Okay. Now, I'd like to direct your  
2 attention to page 15 of the March 24th  
3 proposal. Do you have that?

4 A. I do.

5 Q. The first point in the proposal is to  
6 eliminate the existing sub-plan, correct?

7 A. That's correct.

8 Q. And isn't it a fact that your proposal

9 indicates that "payments comparable to sub,

10 for certain layoffs during the transformation

11 period, will be discussed by the parties?"

12 A. That's correct.

13 Q. So again, in the context in which the

14 union IUE-CWA has accepted your March 24th

15 proposal, those discussions could easily

16 result in a denial to the union of any sub-

17 payments, correct?

18 A. Sub-payments are not a competitive

19 practice in our industry. In any event, the

20 IUE accepted this proposal on its face; it

21 could result in that circumstance.

22 Q. In fact, the proposal includes a maximum

23 on how much such payments can be, at page 15,

24 correct?

25 A. That's true.

84

1 Q. And the proposal doesn't have a minimum,

2 does it?

3 A. No, it does not.

4 Q. As I understand the position of Delphi

5 and its negotiations with IUE-CWA, you've made

6 a wage proposal of 12.50 an hour on the

7 judgment that that is what you need to be

8 competitive, correct?

9 A. That's true.

10 Q. And is it also accurate to state that in

11 your main declaration, beginning in paragraph

12 83, you identify the process that Delphi went  
13 through to construct, in effect, its 12.50  
14 wage offer?

15 A. That's true.

16 Q. And you identify the data points, I  
17 believe you call them that were used in your  
18 construction of the \$12.50 offer?

19 A. That's true.

20 Q. And the first data point is the fact that  
21 certain supplemental agreements between Delphi  
22 and the IUE have starting wages -- I'll leave  
23 out a few words, which produce an all in labor  
24 rate under 20 dollars an hour?

25 A. That's true.

85

1 Q. Now, those agreements between IUE and  
2 Delphi, did they apply to any existing  
3 employees, when they were made between the  
4 parties?

5 A. I'm sorry, could you repeat it again?

6 Q. Weren't those agreements restricted to  
7 new hires?

8 A. By and large that's true.

9 Q. Well, is it by and large or is it true?

10 A. There were, I believe, certain agreements  
11 where wage increases and COLA was foregone as  
12 in Kettering that applied to existing  
13 employees. The starting wages were for new  
14 hires.

15 Q. The starting wages were for new hires.  
16 Those agreements for competitive wages, apart



17 from the Kettering example, did not require  
18 anyone to give up any wages they had already  
19 earned, correct?  
20 A. That's correct.  
21 Q. Now, the second data point had to do with  
22 estimated LIBOR rates of 45 competitors, is  
23 that right?  
24 A. That's true.  
25 Q. And the competitive average of those 45

86

1 competitors that Delphi selected, wage was  
2 \$13.09 ?  
3 A. That's true.  
4 Q. What was the range? What were the  
5 highest rates paid by your competitors?  
6 A. I don't specifically recall.  
7 Q. Well, of the 45 competitors can you tell  
8 us what they range from, from low to high?  
9 A. I believe they were as low as the seven  
10 to eight dollar range and somewhere in the 14,  
11 15 dollar range.  
12 Q. And that was, again, some of your  
13 competitors?  
14 A. That's true.  
15 Q. Now, your next data point was as a result  
16 of this so-called growth and opportunity  
17 program maintained by General Motors?  
18 A. Yes.  
19 Q. And under that program, the lowest  
20 competitive rate was 14 dollars an hour?  
21 A. Yes, I believe that's true.

22 Q. And that was the cheapest of the 13 --  
23 meaning lowest hourly rate, growth and  
24 opportunity bids?  
25 A. That was the lowest as expressed in

87

1 future years.  
2 Q. Okay. Now that leaves 12 other  
3 competitors that were included with the  
4 information you got from General Motors,  
5 correct?  
6 A. I'm sorry, can you repeat the question?  
7 I was reading.  
8 Q. Under paragraph 87, you're reporting on  
9 13 competitors you've learned information  
10 about from General Motors?  
11 A. True.  
12 Q. You've indicated that the lowest of those  
13 13, the lowest rate was 14 dollars? Correct?  
14 A. I just re-read the information here in my  
15 declaration and I think it said indicated an  
16 average base wage of approximately 14.  
17 Q. Yes, that's the lowest of the 13  
18 competitors, correct? Take a minute to read,  
19 if you need.  
20 A. I don't believe it says loss, I think it  
21 says average.  
22 Q. All right. Let's look at this sentence  
23 and see if we can figure out what it means.  
24 "According to this data, the average labor  
25 costs included in the most competitive

88

1 supplier bid was slightly more than 23 dollars  
2 per hour." Now I read that to say that your  
3 14 dollar calculation was from among the lease  
4 expensive of the 13 growth and opportunity  
5 bids that Delphi reviewed?

6 A. I believe what this is saying is we  
7 looked at 13 bidders who wanted business from  
8 us.

9 Q. Right.

10 A. And then averaged that and took what  
11 would be the average base wage, not lowest,  
12 and therefore 14 dollars.

13 Q. Okay. Let's look at the next data point,  
14 that's a BLS data, which is Bureau of Labor  
15 Services, correct?

16 A. I think it's Bureau of Labor and  
17 Statistics.

18 Q. Statistics, correct, yes statistics. Now  
19 in paragraph 93, your data indicates that  
20 average hourly wages for the most populated  
21 job categories among all auto supply industry  
22 employers was \$15.37, correct?

23 A. It is correct, and the auto supply does  
24 include the big three Delphi and Vestion.

25 Q. Okay. That average is 15.37?

89

1 A. That's correct.

2 Q. And then your next data point, and I

3 believe your second to last was, the study  
4 that was conducted by the Center for  
5 Automotive Research?  
6 A. Yes.  
7 Q. And that shows that the average for UAW  
8 represented employers was \$16.23, is that  
9 correct?  
10 A. That's true.  
11 Q. Then your final data point has to do with  
12 penny sheets you constructed?  
13 A. Yes.  
14 Q. From competitors what you assumed to be  
15 competitor rates?  
16 A. Yes.  
17 Q. And the penny sheet comparisons that you  
18 constructed was high as \$14.38 an hour?  
19 A. That's true.  
20 Q. Let me ask you some questions on a  
21 different topic, Mr. Butler. I believe you  
22 testified at the KECP hearing that was  
23 conducted in this proceeding?  
24 A. No, I did not.  
25 Q. All right. You are aware of the KECP

90

1 hearing, correct?  
2 A. I am.  
3 Q. And isn't it true that the KECP plan that  
4 was approved by the Court applied to fewer  
5 than 500 executives employees by Delphi?  
6 A. It's my understanding that the Court  
7 approved, through human capital ,otions, a

8 program of at-risk pay incentive that covered  
9 salary to non-executive employees. And true,  
10 the KECP motion, a short-term incentive for  
11 at-risk pay for executives.

12 Q. The short-term incentive through what  
13 pay?

14 A. At-risk.

15 Q. At-risk pay, I see. I'm trying to  
16 understand what it was that was approved by  
17 the Court at the hearing that was held. As I  
18 understood it, the Court had approved the KECP  
19 plan for fewer than 500 executives. Am I  
20 wrong about that?

21 A. At the hearing, I believe that's true.

22 Q. Okay. And was there another point at  
23 which the Court approved a broader plan for  
24 Delphi's salary and managerial work force?

25 A. I believe that was approved in the human

91

1 capital motion.

2 Q. That was the motion that was approved as  
3 one of the first days here in the --

4 A. That's my recollection.

5 Q. Okay. And that first day -- well, we'll  
6 get to that in a minute. Now the KECP plan  
7 for the executives, based on the performance  
8 of Delphi to date, isn't it clear that Delphi  
9 will meet the financial targets that were  
10 included for the first six months of 2006?

11 A. Putting on the performance for the  
12 following three months, the second quarter

13 there could be a pay-out.

14 Q. Has Delphi adopted a short-term incentive  
15 plan for its remaining salaried managerial  
16 employees?

17 A. As approved in the human capital motion  
18 we are, in fact, in position to execute that  
19 plan.

20 Q. Well, it's in place as we stand here  
21 today, right?

22 A. Yes, it is.

23 Q. And that plan applies to all non-  
24 executive salaried to managerial employees in  
25 the United States?

92

1 A. It largely does.

2 Q. It applies to about 14,000 people, isn't  
3 that correct?

4 A. Approximatley. There are some  
5 subsidiaries that do not participate in this.

6 Q. And that plan has the same OBIDAR UG  
7 targets for the corporation and business units  
8 as have been applied to the executive KECP  
9 plan, correct?

10 A. The overall target formula is the same --  
11 its application on each individual, of course,  
12 is variable on the cooperative compensation.

13 Q. Well, I understood that the KECP plan for  
14 the executives, if paid at in full, would pay  
15 out approxiamtely 38 million dollars?

16 A. I believe that's correct.

17 Q. And how much money will be paid out to

18 the 14,000 salaried to managerial employees if  
19 their short-term incentive plan also pays out  
20 at the end of June, 2006?

21 A. I don't specifically recall an exact  
22 number, I think it target lows it was on the  
23 order of, I think, 60 million.

24 Q. Sixty million. Now, the corporation got  
25 specific approval for the 38 million that is

93

1 in play on the executive KECP, correct?

2 A. That's true.

3 Q. At what point did the Court enter an  
4 order approving 60 million dollars for a  
5 short-term incentive plan on a similar basis  
6 for other Delphi salaried to managerial  
7 employees?

8 A. I'm not aware. I believe the non-  
9 executives have been considered normal course  
10 compensation.

11 Q. So the 60 million then is normal course  
12 for Delphi?

13 A. It is normal course for us to have an  
14 element of at-risk pay within a competitive  
15 structure to have an element of at-risk pay in  
16 a complete obstracter for our non-executive  
17 employees.

18 Q. And the -- was there an element of at-  
19 risk pay for these 14,000 executives in 2003?

20 A. Executives? I'm sorry can you --

21 Q. Fourteen thousand non-executive in 2003?

22 A. There was.

23 Q. And isn't it true that there was no pay-  
24 out to them under that plan in 2003?  
25 A. That's true, there was no pay-out.

94

1 Q. And in 2004, isn't it also true that  
2 there was no pay-out on the short-term  
3 incentive plan?  
4 A. I believe that's true.  
5 Q. And in fact, in 2005 it's also true that  
6 there was no pay-out under the short-term  
7 incentive plan?  
8 A. I believe that's correct.  
9 Q. Isn't it true that your belief, looking  
10 at the performance to date, that it is likely  
11 to generate a pay-out for both executives and  
12 the 14,000 non-executive personnel?  
13 A. Could I see the deposition, please?  
14 Q. Sure.  
15 MR. KENNEDY: Your Honor, you mind  
16 if I had this up to him?  
17 THE COURT: That's fine.  
18 BY MR. KENNEDY:  
19 Q. Referring to page 81, lines 18 through  
20 24.  
21 A. It's my belief that if the performance  
22 date, if it were to continue for the entire  
23 period, as I just mentioned, it is likely  
24 there would be payoff if the performance  
25 continued.

95



1 Q. Okay. As we stand here today, some five  
2 months into the first six months of 2006,  
  
3 knowing that the company is 500 million  
4 dollars ahead of where they were expecting to  
5 be according to their gloomy state scenario,  
6 do you have any reason to believe the bonus  
7 pay-out will not be made in connection with  
8 the first six months of 2006?

9 MR. BUTLER: Objection to the form  
10 of the question, and the characterization  
11 gloomy.

12 MR. KENNEDY: All right, I withdraw  
13 gloomy.

14 THE COURT: Is there a question or  
15 not?

16 MR. KENNEDY: Yes, there is a  
17 question.

18 BY MR. KENNEDY:

19 Q. Do you have any reason to believe,  
20 knowing what you know, given where we are,  
21 that there won't be a pay-out of both these  
22 programs in connection with the first six  
23 months of 2006?

24 A. Because EBITDA ROOG is different than the  
25 500 million. I would not speculate on that.

96

1 Q. So, do I infer from that that you don't  
2 have any particular knowledge which would lead  
3 you to believe that it won't be paid out in

4 six months?

5 A. If the performance continues, I believe,  
6 that it is likely there'll be a pay-out.

7 Q. And would that pay-out be all 60 million  
8 for the salaried and managerial employees?

9 A. I don't know at this point.

10 Q. The salaried to managerial employees that  
11 will receive the pay-outs include, first line  
12 supervisors and other individuals working at  
13 IUE-CWA represented plants, correct?

14 A. That's true.

15 Q. And the pay-out of bonus will occur  
16 sometime in July of 2006, isn't that most  
17 likely?

18 A. Normal pay-out would be July or August.

19 Q. Certainly in July people would know  
20 whether there's going to be a pay-out, isn't  
21 that fair to say?

22 A. I believe that's fair to say.

23 Q. And, if IUE-CWA had accepted the March  
24 24th proposal, that payment would be made  
25 almost, or the news of the payment would be

97

1 almost simultaneous with the reduction in  
2 wages from 26 dollars to 12.50. Isn't that  
3 also correct?

4 A. The timing would be -- would coincide  
5 within perhaps a couple of weeks.

6 Q. Now, you're aware of IUE-CWA ratification  
7 procedures, correct?

8 A. I am.

9 Q. And they ultimately call for a membership  
10 vote?

11 A. I believe that's true.

12 Q. Would you -- I assume you've watched  
13 these contract ratification procedures over  
14 your career as a company spokesman?

15 A. I have.

16 Q. Don't you think that would have an impact  
17 on the ability of a labor union to have  
18 ratified a collective bargaining agreement if  
19 all the supervisors in the plant were, at the  
20 same time, getting a bonus that they hadn't  
21 gotten in the past four years?

22 A. I think the ratification votes are  
23 largely dependent on what happens for the  
24 individual who is voting. And so, dependent  
25 on the arrangement negotiated, particularly if

98

1 it had soft landings, that would be the  
2 biggest determinant of the ratification vote.

3 Q. And how about through the IUE-CWA  
4 employees that we know from our prior  
5 discussion don't have soft landing, what about  
6 them?

7 A. I think soft landings are a function of  
8 the bargaining.

9 Q. In looking at your declaration, I noticed  
10 that there are references to both the hourly  
11 represented plan and the SRP. The SRP, I take  
12 it, is a salary retirement plan?

13 A. That's correct.

14 Q. And that's the plan that Delphi has  
15 indicated is going to be frozen as of January  
16 1, 2007?  
17 A. That's true.  
18 Q. It's my understanding that Delphi also  
19 maintains another pension plan for its  
20 executives. Is that correct?  
21 A. It has a non-qualified plan for --  
22 Q. Is that part of that plan?  
23 A. It's called a SERP, supplemental  
24 executive retirement program.  
25 Q. Okay. And, I didn't catch the

99

1 announcement that that supplemental executive  
2 retirement plan is being frozen on January 1,  
3 2007. Is it?  
4 A. That program remains capped as provided  
5 for in the human capital motion.  
6 Q. Capped, meaning what?  
7 A. It has a pay-out limit on it that remains  
8 in place. So it was reduced.  
9 Q. It's reduced, but effective January 1,  
10 2007, there will still be a pension plan in  
11 place for the executives, isn't that correct?  
12 A. There will be a non-qualified plan that  
13 exists.  
14 MR. KENNEDY: Could I have just a  
15 minute, Your Honor?  
16 THE COURT: Yes.  
17 MR. KENNEDY: I have no further  
18 questions, Your Honor.

19 THE COURT: Okay.

20 CROSS-EXAMINATION BY

21 MR. PETERSON:

22 Q. Good morning, Mr. Butler.

23 A. Good morning, counselor.

24 Q. Lowell Peterson for the Steelworkers.

25 A. Good morning.

100

1 Q. Mr. Butler, the Steelworkers represent  
2 employees at two Delphi plants, correct?

3 A. That's true.

4 Q. That would be the Home Avenue plant in  
5 Dayton, Ohio, which has approximately 700  
6 hourly employees represented by the  
7 Steelworkers.

8 A. I believe that's approximately correct.

9 Q. And the Vandalia, Ohio plant which has  
10 approximately 300?

11 A. I believe that's correct.

12 Q. Now, as I understand it from the  
13 pleadings that the company has filed in  
14 connection with the motion to reject the GM  
15 Executory Contracts, the Home Avenue plant is  
16 scheduled to be closed by Delphi, is that  
17 accurate?

18 A. I don't believe that's the case.

19 Q. What is going to happen to the Home  
20 Avenue plant?

21 A. I believe it is either a sale or wind  
22 down.

23 Q. Have any sale discussions been had with

24 buyers with respect to the Home Avenue plant?

25 A. I believe there have been discussion with

101

1 General Motors, but I'm not aware of any with  
2 buyers.

3 Q. All right. This has been identified as a  
4 plant that loses somewhere in the vicinity --  
5 it has operating margin losses of nearly 50  
6 percent per year, is that accurate?

7 A. That's true.

8 Q. All right. And you still think you might  
9 be able to sell that plant?

10 A. As a restructured facility. It's my  
11 understanding that the motor mount business is  
12 believed to have -- that the motor mount  
13 business may be a possibility for sale.

14 Q. All right. But, under the company's  
15 plans Home Avenue will not be part of a  
16 reorganized Delphi, correct?

17 A. It would -- if sold, would not be part of  
18 Delphi.

19 Q. Or closed.

20 A. Or if closed.

21 Q. But there are no plans to keep it open as  
22 a part of Delphi, correct?

23 A. Not that I'm aware of.

24 Q. All right. So the nearly 700

25 Steelworkers represented employees at Home

102

1 Avenue go off the books in terms of the labor

2 cost equation for Delphi, correct?

3 A. They would no longer be part of Delphi.

4 Q. All right. So that leaves just the

5 Vandalia plant?

6 A. That's true.

7 Q. All right. Now, the Steelworkers

8 represented employees at Delphi do not have

9 the flow back rights that UAW represented

10 employees have, correct?

11 A. There's no tripartite agreement, that's

12 true.

13 Q. All right. And they are not entitled to

14 any relocation payments such as those that UAW

15 represented employees are eligible for,

16 correct?

17 A. Not at present.

18 Q. All right. And Delphi has not even made

19 an attrition program proposal to the

20 Steelworkers, correct?

21 A. I believe there's been a discussion

22 regarding the attrition program and I believe

23 we are engaged with General Motors around the

24 prospect of extending comparable attrition

25 program or suitable attrition program. And, I

103

1 believe, that's been discussed with steel

2 worker leadership.

3 Q. Well, that's right. Delphi has promised

4 to make an attrition proposal to Steelworkers,

5 correct?

6 A. We have indicated that's our desire.

7 Q. All right. But you haven't done it yet?

8 A. We have not concluded the discussions

9 with General Motors for the subsidies that

10 exist in the UAW version.

11 Q. All right. So you haven't made a

12 proposal to the Steelworkers?

13 A. We have not provided a formal, written

14 proposal to the Steelworkers.

15 Q. So, in connection with the transformation

16 of Delphi, at this point, as we sit here in

17 the middle of a trial to reject our contracts

18 and to modify retiree medical benefits, there

19 is no soft landing in place for any

20 steelworker represented employees, isn't that

21 correct?

22 A. As part of our March 24th proposal, and

23 subject to GM subsidy, we did have the buy

24 outs, I believe, that were included in them.

25 In GM subsidy we had the buy outs that were

104

1 included in that proposal, the 140,000 and

2 70,000, as I recall.

3 Q. Yeah, I want to highlight that a little

4 sub phrase, subject to GM subsidy.

5 A. That's true.

6 Q. And GM has not agreed to pay that

7 subsidy, correct?

8 A. At this time, no. They have indicated to

9 -- that they are interested in resolving the

10 issue, and will provide support broadly, but



11 they have not specifically agreed to that.

12 Q. All right. So at this point in time,

13 unless GM decides to write some checks or

14 otherwise subsidize Delphi's operations, there

15 is no soft landing for Steelworkers

16 represented employees?

17 A. There our November 15th proposal would be

18 operative.

19 Q. And that does not include an attrition

20 program, buyouts, there's no flow-back,

21 correct?

22 A. That's correct.

23 Q. All right. They're just on their own?

24 A. There are limited elements in the

25 November 15th proposal that are industry

105

1 competitive.

2 Q. Right. I would concur with your

3 characterization that it's limited. Now, one

4 of the features of an attrition program, as I

5 understand it, at least in terms of the broad

6 outlines that have been discussed in court,

7 for example, would be that the higher paid

8 employees -- higher paid hourly employees

9 would be the ones more likely to be eligible

10 to take buyouts under the attrition program,

11 is that a fair statement?

12 A. Under the retirement provisions that's

13 true, under the buyout provisions, if a buyout

14 is fashioned, that is available to everyone.

15 Q. All right. In the buyout, payments, of

16 course, would be greater to people with higher  
17 seniority, correct?  
18 A. Greater than 10 years it is different.  
19 Q. All right. I'll ask you to keep that 10  
20 year figure in your mind, I'm going to diverge  
21 a little bit from that line of inquiry. But  
22 let me ask you about your experience as a  
23 negotiator. You've been negotiating contracts  
24 with unions for, I think you said, 25 years?  
25 A. Approximately.

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1 Q. And, have you ever been engaged in  
2 collective bargaining in the 1113 contacts  
3 before this?  
4 A. No, I have not.  
5 Q. All right. Have you ever been engaged in  
6 bargaining with the union in which wage and  
7 benefit cuts and language changes of this  
8 magnitude have been placed in on the table  
9 before you?  
10 A. I have not.  
11 Q. All right. So even with -- if you will  
12 permit my characterization, even with more  
13 modest proposals it takes a certain amount of  
14 time to get to yes in the course of collective  
15 bargaining with the union, correct?  
16 A. I believe in difficult bargaining it  
17 takes not only time, but it also takes  
18 deadlines.  
19 Q. Time and deadlines, both. Now, you've  
20 negotiated with the Steelworkers before,

21 correct?

22 A. At limited level, true. Yes.

23 Q. You're familiar with the procedures used  
24 by, at least in general terms, you're familiar  
25 with the procedures used by Steelworkers,

107

1 Local 87L, it represents the Delphi workers,  
2 correct?

3 A. Generally, yes.

4 Q. And, the Local appoints a negotiating  
5 committee, correct?

6 A. That's true.

7 Q. And after the negotiating committee meets  
8 extensively with the company's  
9 representatives, whatever it tentatively  
10 agrees on has to be approved by the Local  
11 union's executive board, is that right?

12 A. That's my understanding.

13 Q. And then after the executive board  
14 approves, if it does approve that, those  
15 tentative terms, the full membership of the  
16 local has to vote to ratify that, correct?

17 A. I believe that's true.

18 Q. Now, in this case -- I'll call your  
19 attention to your supplemental declaration. I  
20 think that's Exhibit 8.

21 A. Yes.

22 Q. Now you've testified, or in your  
23 declaration you make a statement about, in  
24 general terms, that there has been all kinds  
25 of meetings with the various unions. But if,

108

1 I'll call your attention to -- I think it's  
2 Exhibit A of the declaration which lists the  
3 meetings that you, personally, have been  
4 involved with.

5 A. Yes.

6 Q. You can take a moment to review it, but  
7 as I see it, you've only been engaged in one  
8 meeting with the Steelworkers post-petition.

9 A. I'm sorry, can you repeat the question?  
10 I was reading.

11 Q. You've only been engaged -- you,  
12 personally, have only been involved in one  
13 meeting with the Steelworkers post-petition?  
14 By post-petition I mean the filing of the  
15 Chapter 11 petition in this Court.

16 A. Chapter 11, not 1113, 1114?

17 Q. Chapter 11.

18 A. Chapter 11. No, I don't believe that's  
19 true.

20 Q. No, you don't believe that's true.  
21 You've had more than one meeting with the  
22 Steelworkers?

23 A. I believe that's true, yes.

24 Q. On October 21, at the Troy Marriott,  
25 there's something called a financial

109

1 presentation, right?

2 A. That's true.

3 Q. That's not a negotiating meeting, that's  
4 just a presentation of financial condition,  
5 correct?

6 A. That is a review of financial materials.  
7 And as I recall, that is where we put our  
8 first October proposal on the table. So, I  
9 would call that a negotiating session as well.

10 Q. But in your declaration which you filed  
11 in connection with this motion, you didn't  
12 call it a negotiation, you called it a  
13 financial presentation?

14 A. I think this was prepared by my  
15 administrative assistant and she just declared  
16 the topics.

17 Q. So it's wrong?

18 A. I think it's incomplete.

19 Q. Did you review it before you signed your  
20 declaration?

21 A. I did.

22 Q. All right. You didn't correct that?

23 A. No, I did not.

24 Q. The other reading that I see here is on  
25 January 30, 2006. Right, you see that?

110

1 A. Yes, I do.

2 Q. USWA rubelling up meeting?

3 A. Yes.

4 Q. All right. Rubelling up meetings are  
5 discussion about possible layoffs, correct?

6 A. No, that's not true.

7 Q. On January 30, 2006, there was no actual  
8 proposal on the table for modification of the  
9 collective bargaining agreements, correct?

10 A. The rubelling up meeting is -- rubelling  
11 up is terms that we used to try to bring each  
12 other up to a common state of knowledge, if  
13 you will. And we were beginning, and had  
14 entered into three way discussions with  
15 General Motors and the UAW and we were  
16 briefing the Steelworkers' leadership at that  
17 meeting.

18 Q. Oh, I see. So what you were -- the  
19 rubelling up, as you term it, is not the --  
20 what perhaps has been a term that has been  
21 used by these parties before to talk about  
22 what else or closing of divisions. It's  
23 simply to sort of bring everybody up to the  
24 same level of knowledge?

25 A. That's true.

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1 Q. So, you met with the Steelworkers for, it  
2 looks like about an hour and a half, just to  
3 keep them posted as to discussions that were  
4 taking place with the UAW and GM?

5 A. We shared that as well as some of the  
6 elements that we were discussing with GM and  
7 the UAW as it relates to what eventually  
8 became the March 24th proposal.

9 Q. And that was the last time you met with  
10 the Steelworkers?

11 A. To the best of my recollection, that's

12 true.

13 Q. Do you know about how many people  
14 attended that meeting?

15 A. I believe, there were two representatives  
16 from the -- I actually, as I sit here, I can't  
17 recall specifically.

18 Q. All right. Now, you've mentioned the  
19 March 24 proposal.

20 A. Yes.

21 Q. March 24 is a Friday, isn't that right?

22 A. I believe that's correct. I'd have to  
23 check the calendar to be sure.

24 Q. I think it is. Now, are you aware of the  
25 fact that the Steelworkers received the

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1 proposals? I think you've testified that  
2 there was not a meeting with any of the  
3 unions, they were sent out by delivery. Are  
4 you aware that the Local did not receive those  
5 proposals until the following Monday, the  
6 27th?

7 A. That may be true, I'm not aware.

8 Q. All right. And I gather that the 1113  
9 petition was filed later that week?

10 A. I believe that's -- I believe that's  
11 true.

12 Q. All right. Now, I don't want to repeat  
13 too much of the cross-examination you've been  
14 going through with other counsel, but I think  
15 it's safe to say that you've identified a  
16 number of elements of the March 24 proposal

17 that are contingent on specific commitments by  
18 General Motors. Pension, wage, medical,  
19 retiree medical, buy out. It's a laundry list  
20 of fairly detailed provisions, is that a fair  
21 statement?

22 A. That's a fair statement.

23 Q. All right. So, did you really think that  
24 between Friday, March 24 and Friday, March 31,  
25 General Motors was going to sign on the dotted

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1 line and agree to all of those provisions?

2 A. In the event that there was substantial  
3 discussion or counterproposal, then it would  
4 have caused us to evaluate our timeline.

5 Q. I don't think that answered my question.

6 Did you really think that General Motors was  
7 going to agree to the contributions  
8 contemplated by your March 24 proposal between  
9 Friday, March 24 and Friday, March 31?

10 A. I couldn't speculate on what they'd do.

11 Q. So, you thought it was possible that in a  
12 week they were going pony up, is that right?

13 A. We would hope to have that happen,  
14 although I don't know that it's likely.

15 Q. Now, you didn't have any discussions,  
16 three-way discussions with the Steelworkers,  
17 Delphi and General Motors, correct?

18 A. Not that I recall.

19 Q. I'd like to call your attention to  
20 Exhibit 91 which by my count is the March 24  
21 proposal given to the Steelworkers.



22 MR. KENNEDY: Could I trouble  
23 debtor's counsel for water, please? Thank  
24 you.  
25 BY MR. KENNEDY:

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1 Q. You there?  
2 A. Yes, I am.  
3 Q. All right. Again, I don't want to  
4 belabor this by going through the provisions  
5 that are common between the various proposals,  
6 but I do want to ask you some questions about  
7 what these proposals mean and how they would  
8 work. We start with a general question. I  
9 know Mr. Simon, yesterday, was asking your  
10 thoughts and then you were going to  
11 contemplate this overnight about whether the  
12 dispute resolution mechanisms in place between  
13 the parties and reflect in the proposals would  
14 apply in the event that a given union and  
15 Delphi were not able to agree. For example,  
16 on the level of a buyout and the level of a  
17 pension contribution. Have you had a chance  
18 to think about that further?  
19 A. I did think about that.  
20 Q. And those dispute resolution mechanisms  
21 would not apply, correct?  
22 A. My view is, if we were not able to come  
23 to terms on those elements, it's likely we  
24 would not have an agreement and therefore the  
25 dispute resolution would not be involved.

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1 It's part of a comprehensive proposal.

2 THE COURT: Can I interrupt?

3 Because I'm not sure that was the question  
4 that Mr. Simon addressed to you. I think  
5 there are two different issues. One is if the  
6 union don't accept this proposal.

7 THE WITNESS: Yes.

8 THE COURT: And the other is if they  
9 do. If they do, but these contingencies the  
10 open end -- not the GM contingencies, but the  
11 points that Mr. Kennedy identified and there's  
12 similar provisions for the Steelworkers.  
13 You're not able to reach agreement on those  
14 open-ended provisions, under that scenario,  
15 would the dispute resolution mechanism  
16 elsewhere in the collective bargaining  
17 agreement apply?

18 THE WITNESS: I believe, in that  
19 case, if they accepted the agreement and then  
20 I believe they would apply, subject to all the  
21 other provisions.

22 BY MR. KENNEDY:

23 Q. I'm not certain I understand that. In  
24 other words if the unions were to agree, in  
25 Mr. Kennedy's hypothetical, if the unions were

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1 somehow to sign off on this and get it  
2 ratified, even with these many unresolved  
3 economic and other issues, and these items

4 that are subject to further discussion between  
5 the parties did not result in agreement, would  
6 the parties bring those disagreements to  
7 arbitration and Delphi would say we think it  
8 should be 50 cents an hour and the union  
9 would say 75 cents an hour, is that what  
10 you're testifying?

11 A. I believe, the dispute resolution, our  
12 intent was that would be subject to  
13 negotiations to achieve whatever the dispute  
14 resolution would be.

15 Q. I still don't understand what you're  
16 saying. The point is I think the Judge has  
17 got it exactly right. If we don't have an  
18 agreement between the parties, there's no --  
19 the dispute resolution mechanism is a creature  
20 of the agreements.

21 A. That's right.

22 Q. By definition it would not apply. But if  
23 there is agreement -- I guess by definition it  
24 would apply -- but if there is agreement and  
25 there are open terms and the parties don't

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1 reach agreement, isn't it the case,  
2 particularly with the zipper clause, that what  
3 would happen is Delphi would simply set these  
4 contributions in these terms, at whatever it  
5 decided to set them at?

6 A. That could be the outcome, yes.

7 THE COURT: Can I make sure I  
8 understand this? I understand that the union,

9 under your proposal, if they accept it, would  
10 be precluded from certain very significant  
11 rights. Such as, no strike and the zipper  
12 clause. Are you saying also they would not  
13 have the right to compel arbitration over  
14 whether your proposal was, you know, on the  
15 open-ended items that were to be negotiated?  
16 Would they have the right to invoke the  
17 arbitration provisions of the collective  
18 bargaining agreement?

19 THE WITNESS: That we did not  
20 stipulate with specificity which provisions  
21 would be arbitrable and which would not. And  
22 that's what I referred to a matter of  
23 negotiations.

24 THE COURT: Okay.

25 BY MR. KENNEDY:

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1 Q. All right. But your previous answer is,  
2 in fact, that the company's position is the  
3 open-ended items would not be subject to  
4 arbitration?  
5 A. I said that could be an outcome,  
6 depending on which provisions were arbitrable  
7 and which not.  
8 Q. Well the arbitration -- you're familiar  
9 with -- I don't want to get too arcane, but  
10 are you familiar with the distinction between  
11 interest arbitration and contract arbitration?  
12 A. No. As, I -- not in present mind.  
13 Q. All right.

14 MR. SIMON: Your Honor, I realize  
15 that this is unorthodox, but given what I  
16 sense is the Court's puzzlement and what I can  
17 assure you is mine, might it be appropriate,  
18 might I ask leave to try and clarify what I  
19 think is a fairly significant issue? If not,  
20 I'll wait. It just seems to me --

21 THE COURT: Well, I think his answer  
22 speaks for itself. And there may be questions  
23 on redirect and we'll see what happens.

24 MR. SIMON: Thank you very much.

25 MR. KENNEDY: I'd be happy to yield

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1 to the senior senator from New York, but --  
2 MR. SIMON: The unkindness cuttable.  
3 BY MR. KENNEDY:  
4 Q. Lets take a look at 91. I want to make  
5 sure I understand how some of these provisions  
6 would apply -- Exhibit 91 -- how some of these  
7 provisions would apply as proposed by Delphi.  
8 Now, I think that you've testified that the  
9 wage provisions, if you will, which was  
10 appendices A-1 and A-2.  
11 A. Yes.  
12 Q. Those were essentially the same proposals  
13 made to all of the unions, correct?  
14 A. They were largely the same, they did make  
15 proviso where local new hire rates were lower  
16 than the proposed starting rate that would  
17 remain in place.  
18 Q. So, for example -- well, let me take that

19 one at a time. Let's look at Appendix A,  
20 that's the sort of competitive benchmark  
21 proposal, correct?  
22 A. Let me see.  
23 Q. A-1.  
24 A. Yes.  
25 Q. The concept, as I understand your

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1 testimony on cross and in your declaration,  
2 concept of coming up with the wage rates  
3 proposed in Appendix A-1 was to hit a  
4 competitive wage rate that would permit the  
5 debtors to compete in your market, correct?  
6 A. I'm sorry, I'm looking at Appendix A-1  
7 and when I said yes, I meant I had A-1.  
8 Q. I'm sorry.  
9 A. This appears to me to be the --  
10 Q. Yes.  
11 A. Okay.  
12 Q. All right. So those wages were, at some  
13 level of detail, arrived at as a way to hit  
14 what could be termed the market rate, a  
15 competitive rate that Delphi could pay in its  
16 market, correct?  
17 A. I believe that's a fair statement.  
18 Q. All right. So under this proposal,  
19 anyone at the remaining Steelworkers'  
20 facility, which would be Vandalia, hired on or  
21 after July 1, 2006, would either be hired at  
22 this rate or if there's a lower, new hire rate  
23 at Vandalia at the lower rate, correct?

24 A. That's correct.

25 Q. And, in fact, there is a lower rate for

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1 new hires at Vandalia, correct?

2 A. That's true.

3 Q. In fact it's substantially lower, is that

4 not correct?

5 A. I believe that's true.

6 Q. It's eight dollars an hour?

7 A. That's my understanding.

8 Q. All right. And that new hire provision

9 at Vandalia does not have a grow-in or parity

10 component, correct? In other words, people

11 don't grow into the traditional rate, they

12 stay at rate and increase incrementally, wants

13 and never gets to the traditional rate,

14 correct?

15 A. I believe they grow from eight dollars to

16 a somewhat higher rate, but they do not go to

17 traditional rate.

18 Q. All right. They go to ten dollars an

19 hour?

20 A. That's my understanding.

21 Q. And then stay there?

22 A. Absent other increases that are

23 negotiated.

24 Q. So, in fact, the rate for new hires at

25 Vandalia will be lower than the competitive

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1 rate that Delphi has identified, correct?

2 A. For new hires, that's correct.

3 Q. All right. Well, let's talk about what  
4 happens to existing employees under the  
5 proposal. And I believe that is at page 12 of  
6 the proposal. All right?

7 A. I have page 12.

8 Q. Down towards the bottom, actually at the  
9 bottom, tradition and tiered to employees at  
10 the Vandalia site will be converted to tier  
11 three wages. Tier three wages are what, Mr.  
12 Butler?

13 A. Tier three wages, I believe, are the  
14 eight dollar an hour wages.

15 Q. So, someone at Vandalia who's making 27  
16 dollars an hour, for example, would go to  
17 eight dollars an hour? Is that the proposal?

18 A. That appears to be.

19 Q. All right. That, as I think you've just  
20 testified, is substantially below what Delphi  
21 has identified to be the competitive rate it  
22 needs?

23 A. It is below the competitive rate we have  
24 identified.

25 Q. Now, with respect to the nontraditional

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1 employees at Vandalia currently, that would be  
2 the majority of employees at Vandalia,  
3 correct?

4 A. I believe that's true.



5 Q. And that would include so-called tier  
6 twos as well as the full 27 dollar an hour  
7 people?  
8 A. The -- I'm sorry, the --  
9 Q. Tier two as you identified them on page  
10 12?  
11 A. Yes, there'd be tier two. I understood  
12 you to say that the non-traditional and you  
13 included the 27 dollar an hour people in that.  
14 I'm confused, I'm sorry. Could you restate  
15 the question?  
16 Q. With respect to the people who are not  
17 getting the traditional 27 dollar an hour rate  
18 at Vandalia --  
19 A. Yes.  
20 Q. -- they also had different benefit  
21 structures, correct?  
22 A. That's true.  
23 Q. All right. They don't have the same  
24 level, same generosity from -- there's one  
25 term, they don't have the same amount of

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1 benefits in the medical arena as the  
2 traditional employees, correct?  
3 A. I believe that's the case.  
4 Q. They're not in the defined benefit  
5 pension plan, correct?  
6 A. I believe in some instances that's true.  
7 I'm not aware of all the details of that.  
8 Q. And with respect to -- between a third  
9 and a half of the Vandalia employees, they do

10 not currently have a retiree medical benefit  
11 guarantees by Delphi, correct?  
12 A. I believe they have a medical spending  
13 account.  
14 Q. Now, you're familiar with the concept of  
15 OPEB, I think you testified about it, correct?  
16 A. Yes, I am familiar.  
17 Q. And you're familiar with the fact that  
18 Delphi has identified a certain accumulative  
19 OPEB amount that it carries on its books that  
20 it seeks to take off of its books through  
21 these proposals, correct?  
22 A. That's true.  
23 Q. With respect to the employees who have  
24 these medical spending accounts, there is no  
25 such accumulated OPEB amount that needs to be

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1 taken off the books, correct?  
2 A. I believe that with regard to medical  
3 spending accounts, there is some limited OPEB  
4 liability.  
5 Q. It is a fraction of what it is for a  
6 traditional employee who has actual benefit  
7 guarantees from the corporation?  
8 A. I think that's a fair characterization.  
9 Q. Because, in fact, the company's only  
10 obligation to these employees is the defined  
11 amount per hour that the corporation  
12 contributes into these medical spending  
13 accounts, correct?  
14 A. That's true.

15 Q. And that's the cap on the liability,  
16 there's no backstop on the part of the  
17 corporation, correct?  
18 A. That's correct.  
19 Q. Let me bring you back to the proposal,  
20 the March 24 proposal, page 4. The COLA  
21 provision, cost of living allowance.  
22 A. Yes.  
23 Q. Well, isn't it the fact that there is --  
24 that the union has already waived the COLA for  
25 the balance of the contract at the Vandalia

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1 plant?  
2 A. I don't recall.  
3 Q. Do you recall that the Steelworkers and  
4 Delphi engaged in, what they call, fix-it  
5 negotiations in the fall and winter of 2004 at  
6 Vandalia?  
7 A. I do recall that.  
8 Q. And that was in response to a statement  
9 by management that Vandalia might, in fact,  
10 close unless certain adjustments were made to  
11 the operations and the labor costs at  
12 Vandalia, is that right?  
13 A. The need to improve competitiveness and  
14 get viable site, it's true if we were not able  
15 to do that. Site would not be viable.  
16 Q. All right. And to translate the need to  
17 improve competitiveness means lower costs?  
18 A. That's one element.  
19 Q. All right. Including lower labor costs?

20 A. That's one element, yes.

21 Q. All right. And in fact the union agreed  
22 to lower labor costs in a number of areas,  
23 correct?

24 A. I believe that's true.

25 Q. And you recall now at this point where

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1 that included waiving the COLA?

2 A. I don't recall as I sit here. I'm not the  
3 principle bargainer with the Steelworkers.

4 Q. Do you recall that those negotiations also  
5 resulted in the Steelworkers agreeing to  
6 forego certain other payments that were  
7 scheduled to take place over the life of the  
8 contract, bonus and other payments?

9 A. I just recall that there were a number of  
10 changes made that improved the competitiveness  
11 and reduced the labor cost.

12 Q. And, in fact, there were certain work-rule  
13 changes that were negotiated in the course of  
14 those fix-it negotiations, correct?

15 A. I believe that's true.

16 Q. All right. And all of this took place  
17 notwithstanding your broad assertion that the  
18 no-sell/no-close provisions in the -- all the  
19 unions' contracts make it impossible for  
20 Delphi to have the flexibility it needs in  
21 connection with unprofitable facilities,  
22 right?

23 A. To the extent that we need to realign our  
24 product portfolio to focus on businesses we

25 can be successful in. A no-sell/no-close or a

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1 jobs bank -- and a jobs bank provision can  
2 inhibit restructuring.

3 Q. Are the new hires -- are the people -- are  
4 the non-traditional employees at Vandalia  
5 eligible to participate in the jobs bank?

6 A. I don't believe so.

7 MR. PETERSON: If I might have a  
8 minute, Your Honor?

9 THE COURT: Okay.

10 BY MR. PETERSON:

11 Q. I think the answer to this question might  
12 have already been clear, but let's make sure.  
13 Is it your testimony -- we want to make sure  
14 that your testimony is as follows. If, in  
15 fact, there is no consensual resolution, so  
16 Delphi and the unions do not enter into new  
17 agreements and the existing agreements are  
18 rejected by court order, is it your position  
19 that there would be no dispute resolution  
20 mechanism in place between Delphi and its  
21 unions?

22 A. Not as proposed.

23 MR. PETERSON: I have nothing  
24 further.

25 THE COURT: Okay.

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1 CROSS-EXAMINATION BY

2 MS. ROBBINS:

3 Q. Good morning, Mr. Butler.

4 A. Good morning, Counselor.

5 Q. Marianne Robbins. Marianne, the IAM and  
6 the IBEW. Do you have your declaration --  
7 your initial declaration and exhibits in front  
8 of you? I believe it's Exhibit 7.

9 A. I do.

10 Q. I'm going to ask you to look at Exhibit A,  
11 which is immediately following the declaration  
12 itself. I don't think -- it's not marked as  
13 Exhibit A, it's the first exhibit. There's a  
14 list of contracts at that point. And there is  
15 first a list from one to six, do you see that?

16 A. I do.

17 Q. And it references international unions. I  
18 just want to clarify, you do not have a  
19 separate -- Delphi does not have a separate  
20 agreement with the IAM International or the  
21 IBEW International, is that right?

22 A. I believe those are local agreements.

23 Q. Okay. So that initial list is not  
24 intended to be separate agreements. The  
25 agreements with the IAMAW and IBEW are listed

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1 below under local agreements.

2 A. I believe that's correct.

3 Q. I want to talk a moment about benefit  
4 guarantees that you have -- are those  
5 tripartite agreements between your Delphi,  
6 certain unions and GM?

7 A. No, they are not.

8 Q. The agreements that I saw or the documents

9 I saw attached to Mr. Weber's declaration

10 include reference to obligations of Delphi.

11 Are there agreements between Delphi and GM

12 that reference those benefit guarantees?

13 A. There are commercial agreements, as I

14 understand it, between Delphi and General

15 Motors.

16 Q. And have they been made available to the

17 parties, I mean to the unions?

18 A. I am -- I don't recall.

19 Q. What do those commercial agreements say

20 about benefit guarantees in terms of which

21 unions are covered, if any? If you know.

22 A. I believe the commercial agreements only

23 cover the UAW.

24 Q. But there are additional agreements,

25 benefit guarantees?

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1 A. It is my understanding that there are

2 benefit guarantees between General Motors and

3 at least three of the unions that we deal

4 with.

5 Q. Do you have any understanding as to when

6 those agreements were reached?

7 A. I believe they were reached sometime in

8 1999, although I'm uncertain.

9 Q. And was that the time of the spin-off?

10 A. The -- Delphi was spun off in 1999.

11 Q. And at the time of the spin-off was there

12 a discussion with all unions about how they  
13 would be treated under the spin-off?  
14 A. I believe there were discussions.  
15 Q. And in those discussions is it -- is it  
16 accurate that all union represented employees  
17 were told that they would have the same rights  
18 as the UAW in terms of the separation from GM?  
19 A. I do not know.  
20 Q. You were not involved?  
21 A. I was not involved.  
22 Q. You are familiar with pattern bargaining?  
23 A. I am.  
24 Q. And when pattern bargaining occurs between  
25 Delphi and its unions, the larger unions will

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1 negotiate first and the splinter unions such  
2 as IAMAW will negotiate thereafter?  
3 A. Yes.  
4 Q. And there are assurances that Delphi  
5 provides that it will provide the same package  
6 changes?  
7 A. As it relates to that which Delphi  
8 negotiates?  
9 Q. Have you -- has Delphi done anything to  
10 determine what rights the IAM and the IBEW  
11 have for benefit guarantees through GM?  
12 A. No, I believe that is -- the benefit  
13 guarantees are a bilateral agreement between  
14 the unions and General Motors.  
15 Q. But to answer my question, you have done  
16 nothing to investigate whether there are



17 agreements, commercial or otherwise,  
18 tripartite or otherwise, there are agreements  
19 for guarantees that would -- benefit  
20 guarantees that would apply to the IAM or the  
21 IBEW?  
22 A. It's my understanding that our bargaining  
23 representative asked the splinter unions if  
24 they, in fact, had an agreement with General  
25 Motors to the benefit guarantees and asked for

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1 copies.  
2 Q. Have you done any calculations as to the  
3 cost of providing benefit guarantees to the  
4 splinter unions if they do not receive those  
5 guarantees from General Motors?  
6 A. Not that I'm aware.  
7 Q. We talked earlier about amounts of 30  
8 million and 60 million. Would you agree that  
9 you'd expect the amounts for the splinter  
10 unions to be far less than 30 or 60 million?  
11 A. As I sit here without a calculation, I'm  
12 uncertain.  
13 Q. At the present time have you made an att  
14 -- have you provided an attrition package to  
15 the IAM and IBEW for consideration?  
16 A. I believe we've had discussions regarding  
17 that and we have had discussions with General  
18 Motors about that, but we have not made a  
19 formal proposal at this point in time.  
20 Q. Who, if anyone, is negotiating with  
21 General Motors concerning an attrition package

22 that would apply to the IAM and the IBEW?  
23 A. I believe that that responsibility would  
24 fall to Darrell Kidd, executive director.  
25 Q. The only attrition package that has been

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1 presented to this court involves the UAW, is  
2 that right?  
3 A. The tripartite agreement, that's true.  
4 Q. And that was negotiated, not by a  
5 representative of Delphi with GM bilaterally,  
6 but it involves the union, isn't that right?  
7 A. That's true.  
8 Q. But you have made no effort to involve the  
9 IAM or the IBEW in negotiations with General  
10 Motors concerning attrition, isn't that true?  
11 A. At present we have not had a three-way  
12 meeting on that topic including General  
13 Motors.  
14 Q. Have you done any costing of what it  
15 provide -- of the cost that would be provided  
16 to provide a parallel attrition package for  
17 this small group from Delphi itself?  
18 A. Those calculations may have been done but  
19 I am not aware of them.  
20 Q. So the IAM and the IBEW don't have an  
21 attrition package. You know that the plant is  
22 scheduled to close at the end of 2007?  
23 A. We have indicated it as non-core.  
24 Q. So you've indicated that it's going to  
25 close, have you not?

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1 A. It would be consolidated or wound down by  
2 the end of '07, yes.

3 Q. Bottom line, no work in Milwaukee?

4 A. As proposed, that's true.

5 Q. But there's no attrition package?

6 A. I believe we had a contingent proposal for  
7 buyouts and we have not concluded the  
8 discussions.

9 Q. There's nothing specific that the IAM or  
10 IBEW could submit to their members and know  
11 that they would have the package that was  
12 being contingently proposed?

13 A. I think we're still in the process of  
14 discussions.

15 Q. So the answer to my question is do you  
16 agree that there is nothing concrete that the  
17 IAM or IBEW could provide to their members on  
18 the issue of attrition?

19 A. There is not a comprehensive attrition  
20 proposal before the IBEW -- or the IBEW and  
21 the IAM.

22 Q. There's not a less than comprehensive  
23 proposal either, is there?

24 A. I believe for the buyouts there is a  
25 proposal?

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1 Q. But it is contingent, it is not definite?

2 A. That's true.

3 Q. So there is no definite proposal,  
4 comprehensive or otherwise, for attrition?  
5 A. There is not an unqualified proposal.  
6 Q. There is also no provision for retiree  
7 health insurance that is non-contingent, isn't  
8 that right, for this group?  
9 A. I believe the proposal indicated for  
10 medical spending accounts for those who were  
11 not covered under the benefit guarantee.  
12 Q. And would you -- are those contingent or  
13 non-contingent on General Motors financial  
14 support? Can we look at the agree -- the  
15 document?  
16 A. I'd have to review it, yeah.  
17 Q. If you look at your exhibit -- we're going  
18 to be looking at the EMS which is one of the  
19 three documents.  
20 A. Could you give me an exhibit number,  
21 please?  
22 Q. It's all in Exhibit 7, I hate to tell you.  
23 A. I'm sorry, thank you.  
24 Q. And if you sort through it's most of the  
25 way toward the back. And I'm afraid there's

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1 no other identifying -- there's no Bates stamp  
2 or anything like that.  
3 MR. BUTLER: Can I have a moment,  
4 Your Honor?  
5 THE COURT: Sure.  
6 MS. ROBBINS: Your Honor, I could  
7 find it for the witness very quickly, if I can

8 approach the witness.

9 THE COURT: Did you find it?

10 THE WITNESS: You say it's a 91?

11 MS. ROBBINS: Can I approach the  
12 witness, Your Honor, and find the exhibit for  
13 him?

14 THE COURT: Sure.

15 THE WITNESS: Thank you.

16 BY MS. ROBBINS:

17 Q. There you go.

18 A. Thank you.

19 Q. Can you confirm now that it is not a  
20 definite, but a contingent proposal that you  
21 made?

22 THE COURT: Are you looking at the  
23 box marked health care?

24 MS. ROBBINS: This is page 18,  
25 health care.

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1 BY MS. ROBBINS:

2 Q. I think it goes, actually -- there's an  
3 indented portion that deals with a health care  
4 account, subject to GM financial support, is  
5 that what your proposal was?

6 A. Yes, it is.

7 Q. Now, in terms of how much would go into  
8 that contingent account if it were to exist,  
9 and I'm -- it just says that there would be a  
10 beginning balance based on their years, it  
11 does not determine that amount?

12 A. As written it does not. We have a

13 methodology for ascertaining a comparable  
14 amount of OPEB based on service and that's how  
15 we would credit it.  
16 Q. It's not here?  
17 A. It's not specifically called out, no.  
18 Q. Now, would it be accurate to state that  
19 you had no interaction with the IAM or the  
20 IBEW about the proposal that was submitted in  
21 October of 2005?  
22 A. I did not have direct interaction.  
23 Q. So you do not know what their response was  
24 to that proposal?  
25 A. Not directly.

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1 Q. And again, in November you were not  
2 involved in any discussions with the IAM or  
3 IBEW, is that right?  
4 A. That's correct.  
5 Q. And you do not know their response to that  
6 proposal?  
7 A. I do not know it directly.  
8 Q. Are you aware that Mr. Gerling was the  
9 designated representative to discuss matters  
10 with the IAM and the IBEW?  
11 A. I am.  
12 Q. Are you aware that prior to filing this  
13 motion Mr. Gerling was unable to meet in  
14 person with the IAM and IBEW concerning the  
15 March proposal?  
16 A. I don't recall.  
17 Q. In terms of information, you make

18 reference in your declaration to information  
19 being provided on December 12th. Would it be  
20 accurate that you're not aware of whether any  
21 information was provided to the IAM or IBEW on  
22 that date?

23 A. I do not recall.

24 Q. And with respect to your reference  
25 concerning information being provided on

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1 January 13th of 2006, are you also unaware of  
2 whether any information was provided to the  
3 IAM or IBEW on that date?

4 A. I don't recall.

5 Q. Are you aware that the IAM and IBEW  
6 provided information requests as early as  
7 October and November of 2005?

8 A. I am generally aware.

9 Q. And are you aware that some of those  
10 requests are only being responded to in May of  
11 2006?

12 A. I am aware that, depending on the nature  
13 of the request, it has taken time to  
14 thoroughly and accurately answer the  
15 questions.

16 Q. You'd have no reason to dispute that  
17 information was not provided until May in  
18 response to those requests?

19 A. I am -- I am uncertain as to the specifics  
20 there.

21 Q. In terms of the question about cost  
22 savings from proposals that were being made by

23 Delphi, did you provide the same answer that  
24 there was no calculation of specific cost  
25 savings for the proposals made to the IAM and

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1 IBEW?  
2 A. It was our intent to develop industry  
3 competitive proposals.  
4 Q. But to answer my question, you did not  
5 identify any cost savings for any of the  
6 proposals made to the IAM or the IBEW?  
7 A. Not that I'm aware.  
8 Q. You make reference, in paragraph 82 of  
9 your declaration, to wage surveys that were  
10 performed. Were those wage surveys for  
11 production employees?  
12 A. Predominantly production, true.  
13 Q. Is it accurate that you performed no  
14 similar survey for skilled trades?  
15 A. That analysis was performed by staff and  
16 so I am uncertain.  
17 Q. Are you aware that the IAM and IBEW asked  
18 you for wage surveys including skilled trades  
19 and salaried employees?  
20 A. I don't recall.  
21 Q. And so I take it then, you also would not  
22 recall whether you ever provided any such  
23 surveys to the IAM or the IBEW?  
24 A. I am uncertain.  
25 Q. Do you still have the ENS IBEW contract

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1 that -- in front of you there? Because I'm  
2 going to ask you a few more questions -- it's  
3 the one I just opened up --

4 A. The proposal.

5 Q. The proposal, excuse me -- the proposal.

6 THE COURT: Which one is this? Is  
7 this the March one or the November one?

8 MS. ROBBINS: March. Yes. It's  
9 March 24th or 25th. I think its March 25th,  
10 Your Honor.

11 THE COURT: March. Okay.

12 MS. ROBBINS: And it's -- the little  
13 sub-heading is ENS Term Sheet --

14 THE COURT: I have it.

15 BY MS. ROBBINS:

16 Q. I'm going to ask you, Mr. Butler, to turn  
17 to page, I believe it's 3 of that -- no, I'm  
18 sorry, page 4 of that proposal. In that  
19 proposal you seek to delete a number of  
20 provisions from the IBEW ENS contract,  
21 including paragraph 45. Are you aware that  
22 paragraph 45 defines the workday?

23 A. As I sit here, no, I'm not.

24 MS. ROBBINS: This is part of, Your  
25 Honor, is part of Exhibit 76, which is a CD.

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1 So with counsel's permission, I will hand him  
2 a copy of the contract.

3 MR. BUTLER: No problem.

4 BY MS. ROBBINS:

5 Q. I am showing you paragraph 45 of the ENS  
6 IBEW labor agreement and because we can't all  
7 have a copy in front of us, and it's  
8 relatively brief, sir. And it's the only time  
9 I will do this, would you read that?

10 A. It reads, "Employees will be compensated  
11 on the basis of the calendar day, midnight to  
12 midnight, on which their shift starts working  
13 for the regular working hours of that shift.  
14 The employee's working week shall be calendar  
15 week beginning on Monday at the regular  
16 starting time of the shift to which they are  
17 assigned."

18 Q. Your proposal is to abolish that  
19 provision. Would you agree that you have not  
20 proposed an alternative?

21 A. It's unclear to me.

22 Q. Would you agree that there is likely to be  
23 more disputes and more confusion if you do not  
24 define what the day is?

25 A. It's unclear to me if we are explicitly

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1 leaving the date undefined or if we are  
2 effectively dealing with the overtime impact  
3 of the day. It's under the heading of  
4 overtime.

5 Q. So you might just change the day and the  
6 week, flexibly, back and forth?

7 A. No. I think this had to do when overtime  
8 is paid and start -- start times.

9 Q. Do you agree that deleting this provision

10 might create some confusion?

11 A. It could.

12 Q. You also propose to abolish voluntary

13 overtime provisions. Can you identify for us

14 what voluntary overtime provisions you seek to

15 delete from this contract?

16 A. I cannot.

17 Q. Do you agree that whether it is a

18 volunteer or a mandated individual you will

19 pay the same amount for overtime? For

20 example, time and a half after 40?

21 A. I believe that's true.

22 Q. So you can't identify any cost savings by

23 deleting a voluntary overtime provision.

24 Isn't that true?

25 A. It may depend on the capability of the

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1 worker, efficiency of operations.

2 Q. But you haven't identified any cost

3 savings?

4 A. Not as I sit here, no.

5 Q. On page 8 of this proposal you propose to

6 delete hiring requirements. Excuse me, I blew

7 it. Find it. Excuse me, it's on page 11. I

8 can't read my own notes. My apologies. Do

9 you know what hiring requirements you are

10 referencing with respect to the IBEW?

11 A. Specifically, I do not.

12 Q. Do you agree that if you make reference

13 to provisions that cannot be identified that

14 this will create confusion in terms of the

15 union's ability to address a proposal?

16 A. My belief is those close to the actual

17 bargaining would have greater knowledge than I

18 on this.

19 Q. Are you aware that the IBEW and IAM have

20 submitted a counterproposal?

21 A. I am.

22 Q. Do you agree that you have not made a

23 response to that counterproposal?

24 A. It's my understanding that we have

25 engaged in discussions regarding that

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1 counterproposal, principally through counsel,

2 but are attempting to discuss and work that.

3 Q. That counterproposal was provided to you

4 on April 20th, is that right?

5 A. That's my understanding.

6 Q. And we are now on May -- sorry, 10th?

7 A. Yes.

8 Q. And you have not been able yet to respond

9 to the union's counterproposal -- to the

10 union?

11 A. I believe that in light of proceedings we

12 have responded through counsel.

13 Q. Would you agree you have not provided a

14 counterproposal?

15 A. We have not a formal counterproposal at

16 this time.

17 Q. And would you agree that it takes more

18 than a week to prepare a counterproposal?

19 A. Depending on the particulars, I think

20 that's a fair statement.

21 Q. Given the number of issues the company  
22 has raised, would you agree that it takes more  
23 than a week?

24 A. I believe that that's a fair statement.

25 Q. But in this case, you did not provide

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1 more than a week to the IAM and IBEW before  
2 you filed this motion. Isn't that right?

3 A. Depending on the nature of discussions  
4 that took place, there could have been more  
5 time.

6 Q. But you're not aware of whether Mr.  
7 Gerling could even get to Milwaukee in that  
8 period of time. Isn't that right?

9 A. I am uncertain with regard to his  
10 schedule.

11 Q. If I were to ask you what you intended to  
12 delete with the statement of intent  
13 representation in the IBEW contract, could you  
14 tell me?

15 A. I do not know the specifics there.

16 Q. If I were to -- and handing you the  
17 contract wouldn't help. Is that accurate?

18 A. I would rely on those closer to the  
19 bargaining.

20 Q. The same answer would apply if I were to  
21 ask you about local practices that you  
22 believed were uncompetitive and whether those  
23 could be identified?

24 A. I would rely on staff.

25 Q. And if I switched from the IBEW contract

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1 to the ENC contract or the IAM contract your  
2 answers would be the same?

3 A. I believe that would be the case.

4 MS. ROBBINS: No further questions,  
5 Your Honor.

6 THE COURT: Okay. Thank you.

7 CROSS-EXAMINATION BY

8 MS. MEHLSACK:

9 Q. Good morning, Mr. Butler. Barbara  
10 Mehlsack here representing the operating  
11 engineers.

12 A. Good morning, Counselor.

13 Q. You've testified -- you testified  
14 yesterday that, I believe, you were  
15 responsible for selecting the collective  
16 bargaining agreements on the plants that are  
17 the targets of the 1113 motion. Is that  
18 correct?

19 A. The core staff and working with the labor  
20 relations function.

21 Q. I ask you, please, to answer my question.  
22 Are you personally involved in selecting the  
23 collective bargaining agreements that are the  
24 subject of the 1113?

25 A. I was involved.

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1 Q. Okay. I ask you to turn to your  
2 declaration, Exhibit 7 and it's Exhibit A and  
3 next to Exhibit 7.

4 A. Yes.

5 Q. Would you look at the list of contracts  
6 on the top half -- sorry -- the exhibit is  
7 entitled the contract subject to the debtor's  
8 1113/1114, motion. Is that correct?

9 A. That's correct.

10 Q. Okay. And there are international  
11 agreements listed at the top of that page.  
12 Is that correct?

13 A. That's correct.

14 Q. And is it not the case that there is, in  
15 fact, no agreement between Delphi and the  
16 International Union of Operating Engineers?

17 A. I believe there are local agreements with  
18 the IUOE.

19 Q. Local agreements exclusively?

20 A. I am uncertain whether that's exclusive.

21 Q. So you don't know what agreements there  
22 are, in fact, between the operating engineers  
23 and Delphi?

24 A. I believe they are local agreements.

25 Q. But you're not certain.

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1 A. I'm not certain.

2 Q. Okay.

3 A. I am certain there are local agreements.

4 Q. But you're not certain whether there are  
5 any other agreements?

6 A. I am uncertain whether there is a single  
7 international agreement.

8 Q. There is, if I might clarify for the  
9 record, no international agreement between the  
10 operating engineers and Delphi, despite the  
11 list. Now, turning to the second half of the  
12 list, the local agreements that are targeted  
13 for a rejection. How many operating engineers  
14 agreements are there on that list?

15 A. There are -- there are three.

16 Q. And what Locals are they?

17 A. They are Local 101s, at Olathe, Local  
18 832s at ENC Rochester, and Local 18s at TNI  
19 Columbus.

20 Q. And has Delphi made proposals to modify  
21 each and every one of those contracts to the  
22 respective operating engineers' Local?

23 A. I believe that's the case.

24 Q. Can you show me, in this voluminous list  
25 of exhibits, which one of those proposals

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1 applies to the Local 101s contract? Can you  
2 identify a Local 101s proposal made by Delphi  
3 to operating engineers' Local 101s?

4 A. It's -- I don't believe I can as I sit  
5 here. It's quite a stack.

6 Q. And in fact is it not the case that you  
7 can't because in fact there has been no  
8 proposal made to Local 101s, Mr. Butler?

9 A. I am uncertain.

10 Q. Do you -- would you turn, please, to the



11 -- bear with me a moment, Your Honor, to  
12 Exhibit 94.  
13 A. I have it.  
14 Q. And did you write that letter?  
15 A. I did.  
16 Q. And that letter's addressed to the  
17 national president of the operating engineers.  
18 Is that correct?  
19 A. That's correct.  
20 Q. All right. And that is -- is it the case  
21 that that letter was intended to be a  
22 transmittal letter for the proposals to the  
23 operating engineers' Locals?  
24 A. Yes, it was.  
25 Q. And you signed that letter.

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1 A. I did.  
2 Q. And did you check the enclosures to that  
3 letter?  
4 A. I did generally check the enclosures.  
5 Q. And do you know if there was an enclosure  
6 to Local 101s?  
7 A. There does not appear to be.  
8 Q. Will you concede today, Mr. Butler, that  
9 there in fact has been no proposal made to  
10 Local 101s?  
11 A. I have not seen one here.  
12 Q. Will you concede today that there has  
13 been no proposal made to Local 101s? Can you  
14 answer the question yes or no please, sir.  
15 MR. BUTLER: Your Honor, if it will

16 help move this along, the debtor -- Mr. Butler  
17 may be uncertain. The debtors will stipulate  
18 there was no proposal to 101s. I think  
19 Counsel knew that before she started the line  
20 of questioning.

21 THE COURT: Okay.

22 MR. BUTLER: We'll stipulate on the  
23 Record, there was no proposal.

24 MS. MEHLSACK: Mr. Butler, you  
25 stipulated to no communications. You haven't

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1 stipulated to no proposal. But this goes to  
2 the -- a number of other issues as to the  
3 witness's representations as to what  
4 bargaining between the operating engineers and  
5 --

6 THE COURT: Well you can go on.  
7 They answered your question.

8 MS. MEHLSACK: Okay. Mr. Butler

9 THE COURT: Is this the plant where  
10 they're said to demolish and there's one  
11 going?

12 MS. MEHLSACK: That's right.

13 THE COURT: All right.

14 BY MS. MEHLSACK:

15 Q. Mr. Butler, you've testified that there's  
16 been patterned bargaining, historically,  
17 between Delphi and its unions.

18 A. That's true.

19 Q. Has there ever been a time when the so-  
20 called splinter or outlier unions have been

21 able to pursue independent bargaining before  
22 you've concluded an agreement with the UAW?  
23 A. Not that I recall.  
24 Q. And how long have you been doing  
25 bargaining for Delphi with the various unions

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1 involved here?  
2 A. With responsibility for splinter units,  
3 since 2000.  
4 Q. And, in fact, isn't it the case that  
5 Delphi's been pursuing the same pattern  
6 bargain strategy in the context of this 1113  
7 motion as it has historically?  
8 A. We have been attempting to deal with each  
9 of the unions in parallel, recognizing the  
10 particulars of our pattern bargaining history.  
11 Q. Mr. Butler, will you turn to Exhibit 188,  
12 please? And what should be the last page of  
13 the exhibit is a letter addressed to you, sir.  
14 A. I'm sorry. We're getting a lot of tabs.  
15 Yes.  
16 Q. And do you recall receiving that letter?  
17 A. I believe I do.  
18 Q. Did you ever respond to that letter?  
19 A. I referred this to staff for handling and  
20 I don't believe I personally responded.  
21 Q. That letter, in fact, is a request to  
22 bargain, is it not, from Local 101s?  
23 THE COURT: Ma'am, you won this one.  
24 They don't have a proposal on it, okay? So we  
25 should just move off of 101s.

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1 MS. MEHLSACK: It goes beyond that.  
2 Their claim is that they would pursue parallel  
3 bargaining with the individual Locals. The  
4 fact is, when a specific Local requested the  
5 opportunity to bargain, they never responded.

6 THE COURT: Well, I don't know  
7 whether you were misled on this, but as far as  
8 I see, since there's no proposal to 101s, 101s  
9 is not covered by this motion.

10 MS. MEHLSACK: Thank you, Your  
11 Honor.

12 BY MS. MEHLSACK:

13 Q. Mr. Butler, turning to the two other  
14 Locals that are covered by -- purported to be  
15 covered by the proposal. They are Locals 18s  
16 and A32s. Is that correct?

17 A. That is my understanding.

18 Q. And what is the facility that Local 18s -  
19 - at which Local 18s represents employees?

20 You don't recall, off the top of your head?

21 A. I don't recall off the top of the head by  
22 Local number. I understand Columbus and  
23 Rochester.

24 Q. Do you know how many employees are -- you  
25 said you don't know which facility is covered

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1 by the 18s contract? Which facility is  
2 covered by the A32s contract?

3 A. By Local number, as I sit here, I don't  
4 recall. I believe there are thirteen  
5 employees at Columbus and six in Rochester.

6 Q. Have you -- and what functions do the  
7 operating engineers perform at these two  
8 facilities?

9 A. I believe that they deal with boilers and  
10 waste water treatment and the like.

11 Q. And is it also true they maintain the  
12 heating, HV -- what's called HVAC, heating  
13 ventilation and air conditioning systems?

14 A. I believe that's true.

15 Q. And turning to your declaration, Exhibit  
16 7.

17 A. I have it. Thank you.

18 Q. You've testified that amongst the data  
19 that you utilized in determining what a  
20 competitive wage rate, is Bureau of Labor and  
21 Statistics data.

22 A. That's correct.

23 Q. Okay. And what categories of employees  
24 did you utilize in terms of -- when you were  
25 determining whether or not the Columbus and

157

1 Rochester contract rates were competitive?

2 A. The study we cited was aimed principally  
3 at production workers and I do not recall the  
4 specific skill trades analysis.

5 Q. And you concede today that the operating  
6 engineers are skilled trades?

7 A. I believe, generally, that's the

8 classification.

9 Q. And are you -- do you know whether any  
10 comparison was made of the heating,  
11 ventilation and air conditioning employees who  
12 work at various automotive parts suppliers and  
13 how those wage rates compared to Delphi's wage  
14 rates for the operating engineers?

15 A. I do not recall the specifics.

16 Q. And would it surprise you to learn that  
17 those wage rates exceed the wage rates in the  
18 competitive proposal?

19 A. I don't know if I would be so -- I would  
20 have to review the data.

21 Q. So you've never reviewed any comparisons  
22 of the wage rates of the operating engineers,  
23 employees at Columbus and Rochester, to the  
24 wage rates received by employees of similar  
25 scales at other automotive parts suppliers

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1 throughout the country?

2 A. Specifically as it relates to HVAC, no I  
3 have not.

4 Q. Specifically as it relates to the  
5 operating engineers?

6 A. That's true. I have not.

7 Q. Would you turn, please, to Exhibit 82?

8 And that is a letter that you wrote, is it  
9 not, to the general president of the operating  
10 engineers --

11 A. It is.

12 Q. -- transmitting the October proposals?

13 A. Yes.

14 Q. And is it not the case then, in that  
15 letter you state that when you constructed the  
16 proposals you did not construct them to meet  
17 any specific level of cost reductions?

18 A. That's true.

19 Q. And have you constructed any of the  
20 proposals that you made to the operating  
21 engineers to meet a specific level of cost  
22 production or savings?

23 A. No. They were constructed to achieve  
24 competitive agreements.

25 Q. Now, you've testified that in

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1 constructing those proposals to achieve  
2 competitive agreements it was necessary to  
3 deal with provisions relating to the sale and  
4 closure of various facilities.

5 A. That's true.

6 Q. All right. Are there -- I believe the  
7 Columbus facility has been identified for  
8 sale, closure or consolidation. Is that  
9 correct?

10 A. That's true.

11 Q. Which one of those? Sale, closure or  
12 consolidation?

13 A. At this point we have determined it to be  
14 non-core and are ascertaining whether it can  
15 be sale or will be wound down.

16 Q. Have you ever identified to the operating  
17 engineers any problems that you have with the

18 provisions in their contract that are  
19 preventing you from engaging in negotiations  
20 to sell the facility?  
21 A. Not that I am aware.  
22 Q. All right. Have you been involved in  
23 negotiations with the operating engineers  
24 before the shutdown of the facility?  
25 A. Not that I recall. I don't have personal

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1 knowledge of that.  
2 Q. Were -- do you have any knowledge of the  
3 negotiations that took place in the shut down  
4 of the Olathe, Kansas facility?  
5 A. I have general knowledge of discussions,  
6 principally with the UAW, around the closure  
7 of Olathe.  
8 Q. Are you aware that the Olathe contract  
9 between the operating engineers and Delphi  
10 specifically provides that if the facility  
11 should be closed that Delphi has the right to  
12 determine what the effects of attrition will  
13 be on its obligations to replace employees?  
14 A. I do not have specific knowledge of the  
15 Olathe IUOE contract, as I sit here.  
16 Q. So that you are not aware of the fact  
17 that when asked, the operating engineers have  
18 been willing to come to the table and  
19 negotiate what -- specific provisions that  
20 Delphi identified as necessary to enable it to  
21 shut down a facility economically?  
22 A. I'm sorry. Can you repeat the question?



23 Q. So, you have no personal knowledge that -  
24 - of negotiations between the operating  
25 engineers and Delphi and the willingness of

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1 the operating engineers to come to the table  
2 when Delphi has identified for them specific  
3 provisions and specific needs in connection  
4 with the shutdown of a facility?

5 A. I do not have direct detailed knowledge.

6 Q. Do you have any knowledge at all?

7 A. I have general knowledge as reported by  
8 staff that the IUOE was willing to engage in  
9 discussions, particularly around attrition  
10 program.

11 Q. Now you have identified the -- or Delphi  
12 has identified, am I correct, both the  
13 attrition program as something that Delphi  
14 believes is essential to reducing its  
15 headcount to enable it to realign its product  
16 -- its portfolio, I should call it. Am I  
17 correct?

18 A. We believe that the attrition program is  
19 an important soft landing and an important  
20 first step in our total transformation.

21 Q. Would you turn to Exhibit 94, please?  
22 And is that a letter that you wrote to the  
23 president of the operating engineers, a  
24 transmittal letter, transmitting the March  
25 24th proposals?

1 A. It is a letter prepared and I did sign

2 it, yes.

3 Q. Okay. And would you read the -- look at

4 the second page of the letter.

5 A. Yes.

6 Q. Where you say that you have stated to the

7 operating engineers that you believe you can

8 utilize the momentum of the Court's approval

9 of the attrition program for the UAW. Is that

10 correct? And then you go on to say for an

11 attrition program which might be negotiated

12 with the operating engineers.

13 A. That's true.

14 Q. Has any attrition program been negotiated

15 with the operating engineers?

16 A. I believe there have been discussions but

17 I am not aware that one has negotiated -- it

18 has not been negotiated.

19 Q. On what do you base your belief that

20 there have been discussions about an attrition

21 program?

22 A. It's my understanding from Mr. Gerling

23 that there have been discussions with all the

24 splinters regarding an attrition program.

25 Q. And what do you characterize as a

1 discussion about an attrition program?

2 A. Discussions to the effect that if an

3 attrition program comparable to the UAW's

4 would be available that that would be an  
5 acceptable approach or solution to the  
6 attrition problem.  
7 Q. Acceptable to whom?  
8 A. To the --  
9 Q. To Delphi?  
10 A. No. My understanding is to the splinter  
11 unions.  
12 Q. It's your understanding that the -- who  
13 has said such an attrition program would be  
14 acceptable?  
15 A. It's my understanding from Mr. Gerling  
16 that that is the feedback he has received from  
17 the splinter unions.  
18 Q. But it is not your understanding that any  
19 particular attrition program has been offered  
20 to the operating engineers?  
21 A. It's my understanding there has been no  
22 formal proposal discussions at this point.  
23 Q. Do you understand there to have been any  
24 informal proposal?  
25 A. I believe what has been described is the

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1 UAW program along with our proposal on March  
2 24th that affects buyouts and that we have  
3 indicated we are endeavoring to receive GM  
4 support to advance a formal proposal.  
5 Q. Now, the UAW program includes what's  
6 called the GM benefit guarantee and the flow-  
7 backs. Is that correct?  
8 A. The GM program involves flow-backs. The

9 GM benefit guarantee is a separate bilateral  
10 agreement between General Motors and the UAW.  
11 Q. Now that GM benefit guarantee, do you  
12 know how it works in connection with Delphi  
13 employees?

14 A. I have a general understanding of it.

15 Q. And what is your general understanding?

16 A. My general understanding is that in the  
17 event that Delphi, through financial distress,  
18 does not meet its contractual commitments  
19 prior to October or '07, as relates to  
20 pensions, post-employment health care and  
21 post-employment life insurance, that General  
22 Motors will cover effectively up to the level  
23 of benefit that it provides for its current  
24 UAW retirees and certain employees, the  
25 comparable level of coverage.

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1 Q. So that effectively the GM benefit  
2 guarantee preserves health insurance for  
3 retirees?

4 A. For retirees and potentially those  
5 eligible to retire or within seven years of  
6 retirement eligibility.

7 Q. Okay. Now, it is part of your proposal  
8 to the operating engineers to cut -- to  
9 eliminate health insurance for retirees. Is  
10 that correct?

11 A. Yes.

12 Q. Okay. And is it the case that health  
13 insurance for salaried employees is being

14 eliminated?

15 A. I'm sorry, could you repeat the question?

16 Q. Is it the case that Delphi is eliminating  
17 health insurance for salaried employees?

18 A. No, that's not the case. Salaried -- are  
19 you speaking about retirees or --

20 Q. Retiree health insurance for its salaried  
21 employees.

22 A. Salaried retiree health coverage has --  
23 effective January 1st of 2007, you will see,  
24 effectively at age 65.

25 Q. But anyone who retires from Delphi until

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1 -- before age 65 will continue it -- before  
2 eligibility for Medicare -- will continue to  
3 have retiree health insurance?

4 A. They will have subject to co-pays,  
5 deductibles and monthly premiums, yes.

6 Q. Now, is that true for all Delphi salaried  
7 employees?

8 A. That is. All U.S. salaried employees --

9 Q. Is it not the case that --

10 MR. BUTLER: I'm sorry. Could you  
11 have him finish the question?

12 MS. MEHLSACK: I'm sorry. I thought  
13 he had.

14 BY MS. MEHLSACK:

15 Q. Go on.

16 A. -- all U.S. salaried employees.

17 Q. Now, is it not the case that pre-1993  
18 hires continued to maintain their health

19 insurance -- retiree health insurance  
20 coverage?  
21 A. No, that is not true.  
22 Q. Turn to Exhibit 165, please.  
23 A. I have the exhibit.  
24 Q. You will bear with me a moment. Is it  
25 not the case, Mr. Butler, that you've

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1 identified the GM benefit guarantee as making  
2 the Delphi proposal to cut retiree health  
3 insurance essentially fair and equitable when  
4 compared to the salaried retirees because it  
5 provides coverage for most union represented  
6 employees?  
7 MR. BUTLER: Objection in the sense  
8 calling for a legal conclusion. I'm not sure  
9 what the --  
10 BY MS. MEHLSACK:  
11 Q. But do you agree, Mr. Butler? Is that --  
12 do you agree with Delphi's representation that  
13 that is one of the elements that makes the  
14 proposal fair and equitable?  
15 A. I believe what we've indicated is that by  
16 action of the benefit guarantee it would  
17 mitigate or reduce the impact of our proposal  
18 to get to competitive wage and benefits  
19 structure.  
20 Q. And have you identified whether the  
21 operating engineers have a GM benefit  
22 guarantee that preserves their retiree health  
23 insurance?

24 A. The operating engineers have produced no  
25 such document that I am aware of.

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1 Q. And has Delphi done any analysis of what  
2 it would cost Delphi, should GM not be willing  
3 to fund the attrition program, to provide a  
4 similar program for the operating engineers?

5 A. Not that I'm aware of.

6 Q. Has Delphi indicated, in any of its  
7 discussions that you have described your staff  
8 has had, its willingness to provide any  
9 funding to equalize the conditions of the  
10 operating engineers with the other unions  
11 relative to retiree health insurance, buyouts,  
12 severance packages?

13 A. Not that I am aware of at this point.

14 Q. Has Delphi identified to the operating  
15 engineers or indicated its willingness to  
16 provide any funds in order to provide what you  
17 have described as the contingent elements of  
18 the contract proposal should GM not be willing  
19 to fund those elements of the proposal for the  
20 operating engineers?

21 A. I'm sorry, Counselor, could you repeat  
22 the question?

23 Q. You've identified, and I won't go through  
24 with you the operating engineer contract --  
25 you've identified several contingent elements.

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1 Among those contingent elements are the  
2 medical accounts, the -- and you have the  
3 buyouts and those are all contingent on GM  
4 funding. Is that correct?

5 A. I think that's basically true, yes.

6 Q. Has Delphi indicated in any way to the  
7 operating engineers that if GM is unable or  
8 unwilling to fund those proposals that Delphi  
9 is prepared to fund them?

10 A. I don't believe that proposal's been  
11 made, no.

12 Q. Yet Delphi continues to fund its retiree  
13 health insurance.

14 A. I'm sorry could you clarify --

15 Q. Delphi continues to fund its retiree  
16 health insurance for salaried employees.

17 A. Delphi continues to fund its salaried  
18 health care coverage until age 65.

19 Q. Which includes retiree health insurance  
20 till age 65.

21 A. That's true, subject to co-pays and  
22 premiums and such.

23 Q. Now -- you bear with me a moment, sir.  
24 Would you turn to Exhibit 94, please?

25 A. I have Exhibit 94.

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1 Q. Page 2 says that in the event that GM  
2 agrees to provide financial support but that  
3 support is insufficient to fund all of the  
4 contingent proposals set forth herein or if  
5 GM's unable to meet its commitment, Delphi and



6 the IUOE agree to discuss which contingent  
7 proposals will be implemented and/or  
8 maintained. Now, there's been discussion or  
9 you've been asked whether or not in the event  
10 that GM support should not be provided, were  
11 the unions to accept these proposals, whether  
12 any conflict or dispute between the unions and  
13 Delphi about the contingent proposals would be  
14 subject to the dispute resolution clause of  
15 the contract. Is it your testimony today that  
16 were the operating engineers to accept this  
17 proposal and GM were to start to fund the  
18 contingent aspects of the proposal such as the  
19 retiree medical account and GM were to suffer  
20 financial reversals that would prevent it from  
21 continuing that funding. What is your  
22 position as to what would happen to those  
23 contingent aspects of the proposal at that  
24 point in time? And assuming that you were in  
25 the middle of a contract term.

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1 A. So the proposal is accepted without  
2 counterproposal or any other negotiation to  
3 change any other provisions, I assume. Then I  
4 believe if it were accepted in its entirety,  
5 then the conflict resolution provision would  
6 be enacted and we would discuss that. The  
7 specific implications of that, again on  
8 certain specifics --

9 Q. So you believe if, for example, in the  
10 middle of the contract term GM were to say we

11 can't afford these retiring medical accounts  
12 anymore, we're pulling the plug. And the  
13 unions were to -- and the operating engineers  
14 were to go to Delphi and say all right, we  
15 want you to start funding these retiree  
16 medical accounts, and Delphi were to say no,  
17 that that would be subject to the arbitration  
18 clause of the contract and an arbitrator would  
19 have the right to decide whether or not Delphi  
20 should put up the money for the retiree  
21 medical accounts?  
22 A. It would be, as I indicated earlier,  
23 pursuant to what we stipulated was arbitrable,  
24 which is not called out specifically, which  
25 provisions are arbitrable is not called out in

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1 the language as I read it.  
2 Q. Well, are you familiar with the  
3 arbitration clause in the operating engineers'  
4 contracts?  
5 A. I am not.  
6 Q. So you don't know whether this dispute  
7 would be covered by that clause or not covered  
8 by that clause?  
9 A. That is correct.  
10 MS. MEHLSACK: I have no further  
11 questions.  
12 THE COURT: Okay.  
13 MR. FOX: Your Honor, Edward Fox  
14 from Kirkpatrick and Lockhart on behalf of  
15 Wilmington Trust Company's indenture trustee.

16 I'll try to be brief. Before I begin cross-  
17 examination, if I could, the one issue about  
18 exhibits. We identified Exhibits 201 through  
19 207 that we proposed to offer into evidence.  
20 That was circulated last Friday in accordance  
21 to the agreement of the parties. And there  
22 has been no objection. So I would ask, if I  
23 could, that at this point that they be  
24 admitted into evidence.

25 MR. BUTLER: Your Honor, I would

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1 only object under our discussions we were  
2 going to deal with the admission of the  
3 exhibits at the end of the hearing, which is  
4 what I said in my opening statement, not, you  
5 know, item by item as we go through. So  
6 that's why there are various objections, we  
7 were trying to reconcile them all and then  
8 deal with it at the end of the hearing.

9 MR. FOX: None of those relate to  
10 ours. And the problem I have is that I've got  
11 a witness on cross-examination and I don't, in  
12 part, know whether, you know, whether I need  
13 to raise certain issues with him concerning  
14 documents or not, particularly if I don't know  
15 whether they're admissible or not. These are  
16 all documents produced to us by the debtors.

17 THE COURT: Well, are you just  
18 looking for identification by this witness? I  
19 mean authentication? I don't --

20 MR. FOX: Well, I don't think that

21 should be an issue but I don't want to find  
22 out later that it is, for instance.  
23 THE COURT: Well, is that an issue?  
24 I mean, if it's just authentication --  
25 MR. BUTLER: No, it's not an issue.

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1 I'm not sure that anything is an issue. If  
2 Mr. Fox had raised it at any time other than  
3 when he starts his cross-examination, if he'd  
4 mentioned it this morning, we could have  
5 worked it out.

6 THE COURT: All right.

7 MR. BUTLER: This is a new piece of  
8 information.

9 THE COURT: Well, do you want to  
10 take a few minutes to confirm that the  
11 authentication is not an issue?

12 MR. BUTLER: I don't think there's  
13 any authentication problems with any of the  
14 documents in these binders, Your Honor.

15 THE COURT: Okay.

16 MR. FOX: Thank you, Your Honor.

17 CROSS-EXAMINATION BY

18 MR. FOX:

19 Q. Mr. Butler, take a look, if you would, at  
20 Exhibit 7a.

21 A. I have it.

22 Q. And this is your declaration, correct?

23 A. Yes. My declaration's contained in --

24 Q. I'm sorry. I couldn't hear you.

25 A. My declaration is contained in 7a.

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1 Q. Okay. In paragraph 1, on page 2 of your  
2 Exhibit 7a, you refer -- you say you're vice  
3 president of Delphi Corporation. And that's  
4 then defined as Delphi. Is that correct?

5 A. That's correct.

6 Q. Okay. Now, throughout the declaration  
7 you then refer to Delphi, for instance on page  
8 3 in paragraph 5, you say Delphi also has  
9 sites that have no union representation. In a  
10 case such as paragraph 5, are you always using  
11 Delphi, the defined term, to mean Delphi  
12 Corporation, or do you mean the collective  
13 debtor entities, the 43 debtor entities?

14 A. I believe that I mean that to be Delphi  
15 Corporation.

16 Q. Okay. So on page 5, paragraph 11, when  
17 you refer to Delphi's employees, you're  
18 referring specifically to Delphi Corporation?

19 A. The employees are assigned to divisions  
20 that are part of Delphi Corporation -- plants  
21 and divisions assigned to Delphi Corporation  
22 that are part of Delphi Corporation.

23 Q. Are the plants and divisions owned  
24 directly by Delphi Corporation?

25 A. I believe they are part of Delphi

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1 Automotive Systems which is held by Delphi

2 Corporation.

3 Q. So the plants are actually owned by  
4 Delphi Automotive Systems, LLC. Is that  
5 correct?

6 A. It's my understanding that we have assets  
7 in Delphi Automotive Systems and that Delphi  
8 Corporation is the owner of Delphi Automotive  
9 Systems.

10 Q. And it's Delphi Automotive Systems, LLC,  
11 correct?

12 A. That's my understanding.

13 Q. And the same is true with respect to your  
14 statements in paragraph 13 of your declaration  
15 concerning Delphi's active manufacturing  
16 sites?

17 A. Yes.

18 Q. And, in fact, they're owned directly by  
19 Delphi Automotive Systems, LLC? Is that  
20 correct?

21 A. I'm uncertain the specific arrangement,  
22 only that Delphi Automotive Systems, LLC  
23 exists and has assets assigned to it and  
24 Delphi Corporation is the holding company or  
25 owner of it.

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1 Q. Delphi Corporation does not hold these  
2 plants directly.

3 A. I don't know specifically, but I do not  
4 believe so.

5 Q. Now, with respect to -- sorry, Your  
6 Honor, I have to find the confidential binder.

7 Now, with respect to the employees at the  
8 plants referred to in paragraph 13 of your  
9 declaration.  
10 A. Yes.  
11 Q. When you say that those -- I'm sorry, let  
12 me back up. Those employees referred to in  
13 paragraph 13 of your declaration at those  
14 plants are performing services for Delphi  
15 Automotive Systems, LLC at those plants,  
16 correct?  
17 A. I believe so.  
18 Q. Okay.  
19 MR. FOX: Thank you, Your Honor.  
20 That's all that I have.  
21 THE COURT: Well, when you -- let me  
22 just -- when you say that, when they're  
23 performing services at those plants for Delphi  
24 Automotive Systems, LLC, is Delphi Automotive  
25 Systems, LLC the employer?

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1 THE WITNESS: I believe the  
2 employer, effectively, I believe, Your Honor,  
3 is Delphi Corporation, but the assets are  
4 assigned to Delphi Automotive Systems, LLC and  
5 we have employment organizations or entities  
6 that employees are released back and forth.  
7 THE COURT: Is this reflected in the  
8 collective bargaining agreements?  
9 THE WITNESS: I think it's our view  
10 the collective bargaining agreements are with  
11 the Corporation and, effectively, the

12 Corporation is the holder of the collective  
13 bargaining agreements.

14 THE COURT: And so when you say that  
15 Delphi Automotive Systems is the employer you  
16 are viewing that simply in the sense of what,  
17 that they got the benefit of the work or what?

18 THE WITNESS: No. Essentially,  
19 that's where the assets and the dollars reside  
20 within the structure.

21 THE COURT: Okay. All right.

22 MR. FOX: Your Honor, if I could  
23 follow up on that?

24 THE COURT: Sure.

25 BY MR. FOX:

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1 Q. Mr. Butler, take a look, if you would, at  
2 Exhibit 201 which is in the confidential  
3 binder.

4 A. Yes, I have it.

5 Q. Are you familiar with this document?  
6 Have you seen this before?

7 A. I believe I've seen this before.

8 Q. Okay. And this Exhibit 201 sets forth  
9 how the employees are employed by -- entity by  
10 entity by debtor, entity by debtor entity,  
11 correct?

12 A. I believe that's true.

13 Q. Okay. And then take a look, if you  
14 would, at Exhibits 202 and 203, please.

15 A. Yes.

16 Q. Do you have those?



17 A. I do have them.

18 Q. Okay. And those are leasing agreements

19 between, in the case of 202, Delphi Automotive

20 Systems, LLC and Delco Electronics Corporation

21 and Delphi Automotive Systems Services, LLC.

22 And is that correct, in the case of 202?

23 A. It appears so.

24 Q. Okay. And in the case of Exhibit 203,

25 it's again an employee leasing agreement

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1 between Delphi Automotive Systems, LLC and

2 Delphi Automotive Systems Human Resources,

3 LLC, correct?

4 A. Yes.

5 Q. Okay. And these are the leasing

6 agreements that are referred to in Exhibit 201

7 under debtor names 38, which is Delphi

8 Automotive Systems Human Resources, LLC and

9 39, Delphi Automotive Systems, LLC, correct?

10 A. I believe so.

11 Q. Okay. Thank you.

12 MR. FOX: Your Honor, that's the

13 road map that --

14 THE COURT: All right. Well, I just

15 want to follow up because I want to make sure.

16 I think -- were these agreements the types of

17 arrangements you were referring to as far as

18 the sharing of employees?

19 THE WITNESS: Yes, Your Honor. This

20 is the agreement that my understanding on how

21 employees are leased between the entities.

22 THE COURT: All right. Now, Delphi  
23 Corporation's not a party to this agreement.  
24 THE WITNESS: That's my understand  
25 -- my understanding, Your Honor, are these are

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1 affectively for tax effectiveness.  
2 THE COURT: All right. But it's  
3 your view that Automotive Systems has the  
4 power to give over an employee for corporate  
5 reporting purposes to one of these other  
6 entities?  
7 THE WITNESS: I'm uncertain on that,  
8 Your Honor.  
9 THE COURT: All right. Okay. Fine.  
10 THE WITNESS: Thank you, Your Honor.  
11 THE COURT: Do you have much  
12 redirect?  
13 MR. BUTLER: Your Honor, the witness  
14 has been on the stand for about three hours  
15 and forty-five minutes at this point and I'd  
16 like to be able to try and make my redirect as  
17 efficient as possible. There will be some  
18 redirect, yes.  
19 THE COURT: Okay.  
20 MR. BUTLER: So if we can take a  
21 lunch break now, that would be appreciated  
22 then.  
23 THE COURT: All right. That's fine.  
24 Come back at 2 o'clock. I think my clerk  
25 caught you all before you left last night to

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1 tell you I can go later, after all, tonight.

2 Okay. (Whereupon this proceeding was

3 concluded.)

4 (Time noted: 12:45 P.M.)

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I N D E X

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4	T E S T I M O N Y		
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2 C E R T I F I C A T I O N

3

4 I, Lisa Bar-Leib, hereby certify that the  
5 foregoing is a true and correct transcription,  
6 to the best of my ability, of the sound  
7 recorded proceedings submitted for  
8 transcription in the matter of the bankruptcy

9 of:

10 DELPHI CORPORATION, et al.

11

12 I further certify that I am not employed

13 by nor related to any party to this action.

14

15 In witness whereof, I hereby sign this

16 date:

17 May 12, 2006.

18

19

20 \_\_\_\_\_  
Lisa Bar-Leib

21

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23

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